रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

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सं. 27] नई दिल्ली, जुलाई 2—जुलाई 8, 2023, शनिवार/आषाढ़ 11—आषाढ़ 17, 1945
No. 27] NEW DELHI, JULY 2—JULY 8, 2023, SATURDAY/ASHADHA 11—ASHADHA 17, 1945

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 21 जून, 2023

का.आ. 1103.—भारतीय रिजर्व बैंक अधिनियम, 1934 की धारा 8 की उपधारा (4) के साथ पठित उप-धारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, भारतीय स्टेट बैंक के प्रबंध निदेशक श्री स्वामीनाथन जानकीरामन (जन्म तिथि: 4.2.1964) को कार्यभार ग्रहण करने की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय रिजर्व बैंक के उप-गवर्नर (डीजी) के पद पर नियुक्त करती है।

[ईफा. सं. 1/1/2022-बीओ-I]

के. बी. नैय्यर, उप सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 21st June, 2023

S.O. 1103.— In exercise of the powers conferred by clause (a) of sub-section (1) read with sub-section (4) of section 8 of The Reserve Bank of India Act, 1934, the Central Government hereby appoints Shri Swaminathan Janakiraman (DoB: 4.2.1964), Managing Director, State Bank of India to the post of Deputy Governor (DG), Reserve Bank of India, for a period of three years from the date of joining the post or until further orders, whichever is earlier.

[eF. No. 1/1/2022-BO-I]

K. B. NAYYAR, Dy. Secy.

नई दिल्ली, 28 जून, 2023

का.आ. 1104.—भारतीय जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 4(2)(घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री सुचिन्द्र मिश्रा के स्थान पर डॉ एम. पी. तन्गिराला, अपर सचिव, वित्तीय सेवाएं विभाग को तत्काल प्रभाव से और अगले आदेशों तक, भारतीय जीवन बीमा निगम के बोर्ड में निदेशक नामित करती है।

[फा. सं. ए-11011/04/2022-बीमा-I]

विनोद कुमार, अवर सचिव

New Delhi, the 28th June, 2023

S.O. 1104.—In exercise of the powers conferred by Section 4(2)(d) of the Life Insurance Corporation of India Act, 1956 (31 of 1956), the Central Government hereby nominates, Dr. M. P. Tangirala, Additional Secretary, Department of Financial Services as Director on the Board of the Life Insurance Corporation of India, with immediate effect and until further orders, *vice* Suchindra Misra.

[F. No. A-11011/04/2022-Ins.I]

VINOD KUMAR, Under Secy.

नई दिल्ली, 28 जून, 2023

का.आ. 1105.—बीमा विनियामक और विकास प्राधिकरण अधिनियम, 1999 (1999 का 41) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री सुचिन्द्र मिश्रा के स्थान पर डॉ एम. पी. तन्गिराला, अपर सचिव, वित्तीय सेवाएं विभाग को तत्काल प्रभाव से और अगले आदेशों तक, भारतीय बीमा विनियामक और विकास प्राधिकरण में अंशकालिक सदस्य के रूप में नामित करती है।

[फा. सं. ए-11011/04/2022-बीमा-I]

विनोद कुमार, अवर सचिव

New Delhi, the 28th June, 2023

S.O. 1105.— In exercise of the powers conferred by section 4 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), the Central Government hereby nominates Dr. M. P. Tangirala, Additional Secretary, Department of Financial Services as part-time member of the Insurance Regulatory and Development Authority of India with immediate effect and until further orders, *vice* Shri Suchindra Misra.

[F. No. A-11011/04/2022-Ins.I]

VINOD KUMAR, Under Secy.

नई दिल्ली, 30 जून, 2023

का.आ. 1106.—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 6 की उप-धारा (1) के खंड (ङ) के उप-खंड (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री सुचिन्द्र मिश्रा के स्थान पर डॉ अभिजीत फुकन, आर्थिक सलाहकार, वित्तीय सेवाएं विभाग को तत्काल प्रभाव से और अगले आदेशों तक, भारतीय निर्यात-आयात बैंक (एक्जिम बैंक) के बोर्ड में निदेशक नामित करती है।

[फा. सं. 9/1/2022-आईएफ-I]

कार्तिकेय मिश्र, निदेशक

New Delhi, the 30th June, 2023

S.O. 1106.— In exercise of the powers conferred by Sub-Clause (i) of Clause (e) of sub-section (1) of Section 6 of the Export Import Bank of India Act, 1981 (No. 28 of 1981), the Central Government hereby nominates Dr. Abhijit Phukon, Economic Adviser, Department of Financial Services, as Director on the Board of Export Import Bank of India (Exim Bank) *vice* Shri Suchindra Misra with immediate effect and until further orders.

[F. No. 9/1/2022-IF-I]

KARTIKEYA MISRA, Director

रेल मंत्रालय

(रेलवे बोर्ड)

नई दिल्ली, 20 अप्रैल, 2023

का.आ. 1107.—रेल मंत्रालय (रेलवे बोर्ड), राजभाषा नियम 1976 (संघ के शासकीय प्रयोजनों के लिए प्रयोग) के नियम 10 के उपनियम (2) और (4) के अनुसरण में निम्नलिखित कार्यालयों जहां 80 प्रतिशत से अधिक अधिकारियों/कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतदद्वारा अधिसूचित करता है:-

1. क्षेत्रीय कार्यालय, कोंकण रेलवे कॉर्पोरेशन लिमिटेड, कारवार।
2. रेल विकास निगम लिमिटेड, कोटा यूनिट।
3. रेल सुरक्षा बल क्षेत्रीय प्रशिक्षण केंद्र, मौला अली।
4. क्षेत्रीय कार्यालय, इंडियन रेलवे कैटरिंग एण्ड टूरिज्म कॉर्पोरेशन लिमिटेड, पटना।
5. रेलटेल कॉर्पोरेशन ऑफ इंडिया लिमिटेड, पटना, टेरिटरी कार्यालय।
6. रेलटेल कॉर्पोरेशन ऑफ इंडिया लिमिटेड, बिलासपुर, टेरिटरी कार्यालय

[फा. सं. हिंदी-2023/रा.भा.-1/12/1/(1440940)]

डॉ. बरुण कुमार, निदेशक (राजभाषा)

MINISTRY OF RAILWAYS

(Railway Board)

New Delhi, the 20th April, 2023

S.O. 1107.— Ministry of Railways (Railway Board) in pursuance of Sub Rule (2) and (4) of Rule 10 of the Official Language Rules, 1976 (use for the Official purposes of the Union) hereby, notify the following offices where 80% or more Officers/ Employees have acquired the working knowledge of Hindi:-

1. Regional Office, Kokan Railway Corporation Ltd., Karwar.
2. Rail Vikas Nigam Ltd., Kota Unit.
3. Railway Protection Force, Trainning Centre, Moula Ali.

4. Regional Office, Indian Railway Catering & Tourism Corporation Ltd., Patna.
5. RailTel Corporation of India Ltd., Patna, Territory Office.
6. RailTel Corporation of India Ltd., Bilaspur, Territory Office.

[F. No. Hindi-2023/O.L-1/12/1/(1440940)]

Dr. BARUN KUMAR, Director (O.L.)

नई दिल्ली, 16 मई, 2023

का.आ. 1108.—रेल मंत्रालय (रेलवे बोर्ड), राजभाषा नियम 1976 (संघ के शासकीय प्रयोजनों के लिए प्रयोग) के नियम 10 के उपनियम (2) और (4) के अनुसरण में **कारखाना परियोजना संगठन, पटना** जहां 80 प्रतिशत से अधिक अधिकारियों/कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतदद्वारा अधिसूचित करता है।

[फा. सं. हिंदी-2018/रा.भा.-1/12/1/(1502443)]

डॉ. बरुण कुमार, निदेशक (राजभाषा)

New Delhi, the 16th May, 2023

S.O. 1108.— Ministry of Railways (Railway Board) in pursuance of Sub Rule (2) and (4) of Rule 10 of the Official Language Rules, 1976 (use for the Official purposes of the Union) hereby, notify the **Workshop Projects Organisation, Patna** where 80% or more Officers/ Employees have acquired the working knowledge of Hindi.

[F. No.Hindi-2018/O.L-1/12/1/(1502443)]

Dr. BARUN KUMAR, Director (O.L.)

भारी उद्योग मंत्रालय

(हिंदी अनुभाग)

नई दिल्ली, 30 जून, 2023

का.आ. 1109.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 (यथासंशोधित 1987, 2007 और 2011) के नियम 10 के उप-नियम (4) के अनुसरण में, भारी उद्योग मंत्रालय के नियंत्रणाधीन 'बीएचईएल, रामचंद्रपुरम, हैदराबाद" कार्यालय को, जिसके 80% से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतदद्वारा अधिसूचित किया जाता है।

[फा. सं. ई-11012/2/2018-हिन्दी]

विजय मित्तल, संयुक्त सचिव

MINISTRY OF HEAVY INDUSTRIES

(Hindi Section)

New Delhi, the 30th June, 2023

S.O. 1109.— In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 (as amended in 1987, 2007 and 2011), the Central Government hereby notifies the **BHEL, Ramachandrapuram, Hyderabad,** an office under the control of the Ministry of Heavy Industries wherein more than 80% staff have acquired the working knowledge of Hindi.

[F. No. E-11012/2/2018-Hindi]

VIJAY MITTAL, Jt. Secy.

नई दिल्ली, 30 जून, 2023

का.आ. 1110.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 (यथासंशोधित 1987, 2007 और 2011) के नियम 10 के उप-नियम (4) के अनुसरण में, भारी उद्योग मंत्रालय के प्रशासनिक नियंत्रणाधीन केंद्रीय सार्वजनिक क्षेत्रक उद्यम, ''भारत हेवी इलेक्ट्रिकल्स लिमिटेड के टीबीजी,नोएडा'' कार्यालय को, जिसके 80% से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतदद्वारा अधिसूचित किया जाता है।

[फा. सं. ई-11012/2/2018-हिन्दी]

विजय मित्तल, संयुक्त सचिव

New Delhi, the 30th June, 2023

S.O. 1110.— In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 (as amended in 1987, 2007 and 2011), the Central Government hereby notifies the TBG, Noida office of "Bharat Heavy Electricals Limited," a CPSE under the administrative control of the Ministry of Heavy Industries wherein more than 80% staff have acquired the working knowledge of Hindi.

[F. No. E-11012/2/2018-Hindi]

VIJAY MITTAL, Jt. Secy.

नई दिल्ली, 30 जून, 2023

का.आ. 1111.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 (यथा संशोधित 1987, 2007 और 2011) के नियम 10 के उप-नियम (4) के अनुसरण में, भारी उद्योग मंत्रालय के प्रशासनिक नियंत्रणाधीन स्वायत्त निकाय 'आईकैट, माणेसर, गुड़गांव'' कार्यालय को, जिसके 80% से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतदद्वारा अधिसूचित किया जाता है।

[फा. सं. ई-11012/2/2018-हिन्दी]

विजय मित्तल, संयुक्त सचिव

New Delhi, the 30th June, 2023

S.O. 1111.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 (as amended in 1987, 2007 and 2011), the Central Government hereby notifies the iCAT, Manesar, Gurgaon office an Autonomous body under the administrative control of the Ministry of Heavy Industries wherein more than 80% staff have acquired the working knowledge of Hindi.

[F. No. E-11012/2/2018-Hindi]

VIJAY MITTAL, Jt. Secy.

नई दिल्ली, 30 जून, 2023

का.आ. 1112.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 (यथासंशोधित 1987, 2007 और 2011) के नियम 10 के उप-नियम (4) के अनुसरण में, भारी उद्योग मंत्रालय के प्रशासनिक नियंत्रणाधीन 'नेशनल ऑटोमोटिव बोर्ड, माणेसर, गुड़गांव'' कार्यालय को, जिसके 80% से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतदद्वारा अधिसूचित किया जाता है।

[फा. सं. ई-11012/2/2018-हिन्दी]

विजय मित्तल, संयुक्त सचिव

New Delhi, the 30th June, 2023

S.O. 1112.— In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 (as amended in 1987, 2007 and 2011), the Central Government hereby notifies the National Automotive Board, Manesar, Gurgaon, an office under the administrative control of the Ministry of Heavy Industries wherein more than 80% staff have acquired the working knowledge of Hindi.

[F. No. E-11012/2/2018-Hindi]

VIJAY MITTAL, Jt. Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 10 अप्रैल, 2023

का.आ. 1113.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधतंत्र, संबंद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, पुने के पंचाट (संदर्भ सं. 22/2015) को प्रकाशित करती है।

[सं. एल-12011/86/2011-आई आर (बी-II)]

सलोनी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYEMENT

New Delhi, the 10th April, 2023

S.O. 1113.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2015) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Pune as shown in the Annexure, in the industrial dispute between the management of Bank of Maharashtra and their workmen.

[No. L-12011/86/2011-IR(B.II)]

SALONI, Dy. Director

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL AT PUNE

Presided Over by SHRI. K. N. GAUTAM

Reference IT NO. 22 OF 2015

Bank of Maharashtra
Lok Managal, 1501, Shivaji Nagar,
Pune 411005 …First Party

Versus

The General Secretary
Bank of Maharashtra Employees Union
C/o. Bank of Maharashtra, Lok Mangal,
1501, Shivajinagar, Pune 411005 …Second Party

AWARD
(Dated : 07.10.2022)

This is a reference forwarded by the Government of India, Ministry of Labour, New Delhi vide order dated 24.05.2012 in exercise of the powers conferred by Clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 in respect of dispute between first party and second party as mentioned in the Schedule annexed to the order of the reference for adjudication to this Tribunal.

2. After receiving the said reference, notices were issued to both parties. After filing statement of claim and written statement by both the parties, the issues were framed on 23.8.2022. However, no evidence led by the Second Party since then. The learned counsel for the Second Party filed purshis at Exh. U-5 dated 7.10.2022 that he is having no instructions from the Second Party. The roznama shows that the second party failed to take any steps to lead evidence and to proceed with the reference. It appears that the second party has lost interest. In view of this in absence of evidence of the second party, the demands of second party cannot be adjudicated. Therefore, I have no alternative, but to answer the reference in the negative. With this, I proceed to pass the following award :-

-: AWARD :-

1. The reference is answered in the negative.
2. No order as to costs.
3. The copies of this award be sent to the appropriate authority of the Government.

Dated: 07.10.2022

K. N. GAUTAM, Presiding Officer

नई दिल्ली, 10 मई, 2023

का.आ. 1114.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार, बीएसएनएल, एबिड्स, हैदराबाद; सहायक महाप्रबंधक (प्रशासन), ओ/ओ सीजीएमटी, ए.पी. सर्किल, हैदराबाद, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री देवमबोटला बालाचौदेश्वर शर्मा, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-हैदराबाद के पंचाट (संदर्भ संख्या 15/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.05.2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-90-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th May, 2023

S.O. 1114.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 15/2012) of the Central Government Industrial Tribunal cum Labour Court – Hyderabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, Telecommunications, BSNL, Abids, Hyderabad; The Assistant General Manager (Admn.), O/o CGMT, A.P. Circle, Hyderabad, and Shri Devambotla Balachowdeshwara Sarma, Worker, which was received along with soft copy of the award by the Central Government on 10.05.2023.

[No. L-42025-07-2023-90-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri IRFAN QAMAR Presiding Officer

Dated the 7th day of March, 2023

INDUSTRIAL DISPUTE L.C. No. 15/2012

Between:

Sri Devambotla Balachowdeshwara Sarma,
S/o Venkateswar Rao,
R/o Peddalingala (V),
Nandivada(M), Krishna …Petitioner

AND

1. The Chief General Manager,
Telecommunications, BSNL,
Abids, Hyderabad.

2. The Assistant General Manager (Admn.)
O/o CGMT, A.P. Circle,
Hyderabad – 1. …Respondents

Appearances:

For the Petitioner : M/s. M.V. Hanumantha Rao, Advocates
For the Respondent : Sri S. Prabhakar Reddy, Advocate

AWARD

Sri Devambotla Balachowdeshwara Sarma, who worked as Mazdoor (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents, Railway Electrification Project (REF), BSNL, Secunderabad seeking for declaring the proceeding No. TA/STB/20-2/REP/06-10/22 dated 27.4.2010 issued by the Respondent as illegal, arbitrary, discriminatory, violative of principles of natural justice and to set aside the same consequently directing the Respondents to regularize or re-engage the Petitioner into service duly granting all the consequential benefits and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

It is submitted that the Petitioner has worked as Mazdoor in Railway Electrification Project(REF) Secunderabad to Nagpur from 1.1.1994 to 30.9.1996 for 1004 days along with others. The Petitioner submitted that thereafter he along with others continued on voucher payment basis for some time and thereafter on contract basis. Petitioner along with others have been requesting for regularization or to provide regular work still no action has been taken by the department, though they have worked for a considerable period. Further, petitioner came to know that by proceedings dated 21.11.2000 similarly situated 79 persons have been regularized by giving them "temporary status" by the respondent, in fact those persons are juniors to the petitioner and other similarly situated persons. Petitioner hails from poor family and have been pursuing the authorities since long time with a hope that the department would consider her claim in a positive manner. Petitioner submits that, as there was no action taken by the respondents he along with others approached Hon'ble Central Administrative Tribunal, Hyderabad Bench, at Hyderabad by filing OA. Nos. 100/10 and 101/10 and the Hon'ble Tribunal after hearing both the parties disposed of the OAs, on 10.2.2010 with specific directions "since the applicants in the OA also have similar claims as the applicants in the WP.No.12872/08, I consider it appropriate to dispose of this Original Application by giving a direction to the applicants to file individual representations to the respondents giving full details namely, their addresses, places at which they were engaged, the period for which they were engaged etc., within a period of 4 weeks and on receipt of such representations, the respondents shall examine their applications with reference to the records and the scheme that was in force and pass orders within a period of 3 months from the date of receipt of such representation." It is submitted that, as per the orders of the Hon'ble Tribunal the petitioner and others have submitted elaborate representations to the Respondent No.1 along with order passed by Hon'ble Tribunal and also attendance book etc. on 3.3.2010 the Respondent No.1 instead of appreciating the circumstances and without proper verification of records and without providing opportunity of being heard, Respondent has issued the impugned letter dt.27.4.2010 stating,

" i) With reference to the representation, pursuant to the directions of the Hon'ble Tribunal dated 10.2.2010 in OA. No.100/10 it is informed that the same has been duly considered having regard to the policy and availability of records and it is regretted that it is not open to re-engage you as casual labours or grant of temporary status under the scheme dt.7.10.1989 which has exclusive application to casual labour who have engaged prior to 31.10.1985 up to 22.6.1988 and continued as such. The following have duly taken into consideration for the aforesaid decision. All the casual labors who were eligible as per letter dt.29.9.2000 of DOT were regularized as one time measure.

(ii) Records pertaining to Railway electrification Project are not available for due verification of information furnished by you as they were weeded out as per the retention schedule. The letter of appointment and payment thereof is requisite record to verify your engagement from 1.1.1994 to 30.9.1996 and the basis for the same while DOT, New Delhi letter No.270-6/84-STN dt.22.6.1988 imposed ban on engagement of casual labours including project circle.

(iii) The certification by the Divisional Engineer about such engagement is not acceptable in the absence of records as indicated above.

(iv) It is stated that you have been disengaged as casual labour and also thereafter continued with contractor and thus there is no employer-employee relationship at any point of time thereafter and as such there is no scope to re-engage you as casual labour and also in view of the complete ban as per DOT, New Delhi letter no.269-4/93 STN-II dt. 12.2.1999 and further affirmed vide letter No. 269-4/93/STN Il dt. 15.6.1999 and the said policy is continuing.

(v) The violation of provisions of Sec.25F of ID Act, 1947 having questioned in the appropriate forum at any time and as such disengagement has become final for all purposes.

vi) This disposes of your representation and it is hereby clarified that no further correspondence will be entertained on this subject."

Petitioner submitted that the proceedings dated 27.4.2010 are ex.facie illegal, arbitrary, discriminatory and contrary to record and violative of principles of natural justice and violative of Art. 14 and 16 of Constitution of India. It is submitted when similarly situated persons were regularized the respondent ought to have extended the same benefit to the petitioner also. Further, the reasoning recorded by the respondent as mentioned in the clause-(i) of the impugned order stating that benefit of extension of temporary status under scheme dated 7.10.1989 is only for casual labours who have engaged prior to 31.10.1985 up to 22.6.1988 is not tenable and when the department had extended similar benefit to similarly situated persons and having extracted work from the petitioner during subsequent period, denial of said benefit amounts discrimination. The contention of the respondents as mentioned in clause-(ii), records pertaining to Railway Electrification Project are not available as have weeded out as per the retention schedule is also not tenable. It is submitted non-availability of the records in the department cannot be attributed to the petitioner and respondent ought to have accepted the records produced by the petitioner. It is submitted regarding para no (4) of the impugned order that when similarly situated persons were engaged and records shows the services rendered by the petitioner the contention that there is no relationship as employer and employee is also not tenable. Clause (5) of the order is not maintainable in respect of the claims of petitioner as he has been pursuing with the department to re-engage him in the respondent department in view of their past experience. The petitioner is having record and also the department had considered similarly situated persons as such the petitioner is entitled for relief. It is submitted that the impugned order is not only illegal but also contrary to earlier directions issued by the Hon'ble Central Administrative Tribunal as such as a last resort the petitioner is approaching this Hon'ble court. The petitioner, along with others approached Hon'ble Central Administrative Tribunal Hyderabad Bench at Hyderabad and filed OA. No. 1229/2010 and after hearing both the sides the Hon'ble Tribunal has directed the applicants therein to approach concerned Labour court under Industrial Dispute Act, 1947 and hence, this petition. It is submitted the petitioner and others have filed their concerned days book duly signed by the employer on every month ending, identity card, etc., the days book clearly postulates all the relevant information of the petitioner with regard to work i.e. MRPTS work, cable work, or alignment, store work, etc., and Petitioner was paid Rs.60/- per day. It is therefore prayed that this Hon'ble Tribunal may be pleased to i) Declare the impugned letter No.TA/STB/20-2/REP/06-10/42 dated 27.4.2010 issued by the respondent as illegal arbitrary, discriminatory and violative of principles of natural justice and consequently set aside the said letter.

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows**:

The Respondent submitted that the claim petition is misconceived and is barred by limitation. There is no engagement of casual labour in BSNL, after 1.10.2000 and the casual labour who have been engaged as such before the imposition of ban vide letter No.270/6/84-STN, New Delhi dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in the project after the imposition of ban vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or regularization under the said policy. The claimant is confusing the Hon'ble Tribunal with regard to the letter No.TA/STB/20-2/REP/06-10/22 dated 27.4.2010 pursuant to the directions of the Hon'ble Central Administrative Tribunal dated 10.2.2010, in OA No.100/2010 filed in continuation of WP No.12872/2008 in the High Court seeking for the identical relief and the communication dated 27.4.2010 based on the directions dt.10.2.2010 in O.A.No.100/2010 to comply with a judicial order notwithstanding the fact that the said O.A.No.100/2010 is misconceived and not maintainable having regard to the definition of employee in Rule 3(8) of BSNL & CDA Rules, 2006 implemented as such from 10.1.2006 thereby leaving no scope to exercise any jurisdiction by the Hon'ble Tribunal and on 28.2.2011 in O.A.No.1229/2010. It is not open for the claimant to assail the same before this Hon'ble Court in any manner for any purpose. The Railway Electrification project for line dismantling is distinct and different and the said project is outside jurisdiction of the respondent thereby leaving no scope to reengage any casual labour engaged by the said projects organization after the imposition of the ban and disengaging thereafter and entrustment of the work to a contractor thereby leaving no scope for reengagement and regularization as per the settled law. The Petitioner is relying on the documents which do not form part of the record of the respondent without any letters of engagement and payment particulars while the maintenance of the records in not the administrative concern of the answering respondent and no records as such are maintained after the expiry of three

years relating to muster roll as per the retention schedule. It is therefore prayed that this Hon'ble Tribunal may be pleased to dismiss the claim petition.

4. Petitioner filed chief examination affidavit and examined himself as WW1 reiterating the facts stated in claim petition stated that, he has worked as Mazdoor (casual labour) in Railway Electrification Project (REF) Secunderabad to Nagpur from 1.1.1994 to 30.9.19996 for 1004 days along with others. Thereafter, he, along with others continued on voucher payment basis for some time and thereafter on contract basis requesting for regularization and no action has been taken by the department, though they have worked for a considerable period.

5. Respondent did not adduce any evidence on their behalf. Both parties filed written arguments as well as submitted oral arguments.

6. Heard. Perused the pleadings of both the parties.

7. **The following points arise for consideration**:-

I. Whether the Petitioner is eligible to be regularized as temporary status with Respondent employment under the scheme Casual Labourers (Grant of Temporary Status and Regularization) Scheme 1989?

II. Whether order dated 27.4.2010 passed by Respondent on Petitioner's representation is just?

III. To what relief if any, the Petitioner is entitled?

Finding:

8. **Points No**. **I & II**: Before proceeding to determination on points, it would be relevant to narrate the facts in the back drop of the matter. As pleaded by Petitioner workman Sri V. Rammeshwara Rao, he has worked as mazdoor (casual labour) in Railway Electrification Project, Secunderabad to Nagpur from 1.1.1994 to 30.9.1996 for 1004 days along with others. The Petitioner along with others continued on voucher payment basis for some time and thereafter on contract basis. He along with others have been requesting for regularization and to provide the regular work. Still no action has been taken by the Department, though they have worked for a considerable period. It is also pleaded that Petitioner came to know that by proceedings dated 21.11.2000 similarly situated 79 persons have been regularized by giving them temporary status by the Respondents. Since no action was taken by the Respondents he along with others approached Hon'ble Central Administrative Tribunal, Hyderabad Bench at Hyderabad by filing OA No.100/10 and 101/10 and the Hon'ble Tribunal after hearing both the parties disposed of the OAs, on 10.2.2010 with specific direction which reads as follows: "since the applicants in the OA also have similar claims as the applicants in the WP No.12872/08, I consider it appropriate to dispose of this OA by giving a direction to the applicants to file individual representations to the respondents giving full details namely, their addresses, places at which they were engaged, the period for which they were engaged etc., within a period of 4 weeks and on receipt of such representations, the respondents shall examine their applications with reference to the records and the scheme that was in force and pass orders within a period of 3 months from the date of receipt of such representation." The Petitioner in compliance of the above order moved representation dated 3.3.2010 to the Respondent authority and Respondent rejected the representation by passing impugned order dated 8.6.2010. Against this impugned order present industrial dispute petition has been filed by the workman before the Tribunal. It is also submitted that the Petitioner along with others have challenged impugned order dated 27.4.2010 rejecting the representation of Petitioner and filed OA No.1229/2010 and after hearing both the sides Hon'ble Tribunal has directed the applicant to approach the labour court under I.D. Act, 1947. The copy of the order dated 28.2.2011 passed in OA No.1229/2010, G. Pentaiah and others Vs. Union of India has been filed wherein Hon'ble Tribunal has observed as below:

> "8. Admittedly, the applicants were engaged between 1.1.1994 and 30.9.1996 and they do not come under the scope of the scheme. However, a direction was given by this Tribunal earlier to examine their cases since the applicants claimed that some juniors who were appointed subsequently had been regularized. I now find that the Respondents have rejected the claim on the ground that relevant records have been weeded out. the matter raised disputed questions of fact viz., whether the applicants were employed as casual labourers for more than 1000 days and whether they are eligible for temporary status, etc. In the absence of records, it is not possible for this Tribunal to adjudicate this matter.
>
> 9. I, therefore, dispose of this application with a direction to the applicants to approach the labour authorities under the Industrial Disptues Act, 1947, if they are so advised, with all the relevant material so that a decision on their eligibility for temporary status or otherwise can be taken by the Respondent authorities. The Learned Counsel for the applicants has no objection to such a direction being given."

Therefore, in view of the above direction of Hon'ble Central Administrative Tribunal, we proceed to decide to determine the question whether the applicant was engaged as casual mazdoor for more than 1000 days and they are eligible for temporary status.

9. In this regard, the Petitioner has pleaded that he has got engaged as mazdoor(casual labour) in Railway Electrification Project, Secunderabad to Nagpur form 1.1.1994 to 30.9.1996 for 1004 days along with others. It is also submitted that he along with others continued as such on voucher payment basis and later on contract basis.

10. On the other hand, the Respondent has filed counter stating therein that there is no engagement of casual labour in BSNL after 10.10.2000 and the casual labour who have been engaged as such before the imposition of ban vide letter No.270/6/84-STN, New Delhi dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in Railway Electrification Project after the imposition of ban in project circles vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or regularization under the said policy. It is submitted that the Petitioner is not covered under the definition of employee with Rule 3 sub clause 8 of BSNL & CDA Rules, 2006. Therefore, it is not open for the claimant to assail the same in any manner for any purpose. It is also submitted that Railway Electrification Project for line dismantling is distinct and different and the said projects is out side jurisdiction of the answering Respondent thereby leaving no scope to reengage any casual labour engaged by the said projects organization after the imposition of the ban and disengaging thereafter and entrustment of the work to a contractor thereby leaving no scope for reengagement and regularization as per the settled law. It is clear from pleadings of the parties that the Petitioner had worked as a mazdoor in Railway Electrification Project of the Respondent on contract basis. The Petitioner has submitted the documents in support of his allegation which are: Ex.W1 is photocopy of order dated 27.4.2010 which the Respondent authority has rejected the representation of the Petitioner by assigning reasons therein. Ex.W2 is a copy of representation dated 3.3.2010. The last para of the representation reveals that Petitioner has prayed for relief from Respondent to provide him employment, whereas in petition he has sought relief of regularization in the Respondent employment. Document Ex.W3 and W4 are photocopies of the orders of Hon'ble Central Administrative Tribunal passed in OA 1229/2010 and 100/2010. Other document Ex.W5 is photocopy of order passed in OA No.101/2010 dated 10.2.2010. The documents Ex.W6 to W9 are photocopies of the proceedings which were supplied by the Respondent to the Petitioner which contains list of casual labour. Ex.W10 is photocopy of letter regarding temporary status and Ex.W11 is the attendance sheets of the workman Petitioner which has been signed by Divisional Engineer, Telecom, Secunderabad which reveals that the Petitioner has worked as mazdoor from 1.1.1994 to 30.9.1996 in Railway Electrification Project. Ex.W12 is the photocopy of identity card of WW1.

11. **It would be relevant to reproduce the provision of Sec.2(oo)(bb) of I.D. Act, 1947 which provide that,**

> " (oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include:-
>
> (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;''

12. **The Hon'ble Apex Court in the case of S.M. Nilajkar and ors. Vs. Telecom, District Manager has held:** " the termination of the service of workman engaged in a scheme or project amounts to retrenchment within the meaning of sub-clause (bb) subject to the following provision being satisfied:

i) That the workman was employed in a project or scheme of temporary duration;

ii) The employment was on contract and not as a daily wager simplicitor, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and

iii) The employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

iv) The workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.

13. Since the Petitioner has alleged that he has worked as mazdoor from 1.1.1994 to 30.9.1996 in the Railway Electrification Project as contract labour. It goes to show that Petitioner has worked in the Respondent employment on a project which is open for a limited time and after completion of the project the Petitioner cannot claim any employment or regularization in the service of the Respondent. As far as the contention of the Petitioner is concerned that he should be regularized as other casual workers regularized under the scheme, it is settled law that any contract workman has no right to seek regularization of employment from employer, since it is a matter of discretion of the employer. Even otherwise, if a fresh contract contemplated to secure employee appointment with higher qualification or seek a fresh job on contractual employment having more skills, the employer will always have an authority to decide what is best for improving its functioning and which can be depend on work requirements.

14. Petitioner contended that Respondent has mentioned that in the impugned order the record pertaining to Railway Electrification Project are not available for due verification of the information furnished by the Petitioner. As they have weeded out as per retention schedule. The letter of appointment and payment thereof is requisite record

to verify the engagement from 1.1.1994 to 30.9.1996. It is the duty of the authority to protect official files and record, it would be worthy to mention here that Petitioner had worked as Mazdoor in Respondent project for the period 1994-1996 as contract labour and he raised present industrial dispute by filing the petition u/s 2A(2) of the I.D. Act, 1947 in July, 2012. Long span of time more than 15 years have elapsed. Respondent in his counter has stated that no record as such are maintained after the expiry of three years relating to the muster roll as per the retention schedule. Since there was gross latches of inordinate delay on the part of Petitioner in raising present industrial dispute. Respondent is not supposed to maintain record of contractual labour beyond retention schedule. Therefore, in the case of non-production of the record by the Respondent, no adverse inference can be drawn against him in this case.

15. Respondent submitted that there is no engagement of casual labour in BSNL after 1.10.2000 and the casual labour who have been engaged before the imposition of the ban vide letter No.270/6/84-STN dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in Railway Electrification Project after the imposition of ban in project circles vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or for regularization under the said policy. The Respondent has submitted the copy of letter No.270/6/84-STN dated 30.3.1985 wherein it is mentioned that the Telecom Department has directed to stop the recruitment or employment of casual labour of any kind, any type of work. Further, copy of letter No.270-6/84-STN dated 22.6.1988 which is regarding casual labour recruitment wherein it is mentioned (para 2) that, there shall be no recruitment of casual labour even for specific period and it was directed to Respondent Department to engage from neighbouring divisions, employed for the project or electrification work. Further, the copy of the letter of DG Telecom, New Delhi dated 7.11.1989 has been filed wherein it is mentioned that the casual labourers could be engaged after 30.3.1985 in projects and Electrification Circles only for specific works and on completion of the work the casual labourers so engaged were required to be retrenched. It is also mentioned that as per the direction in letter dated 22.6.1988 fresh recruitment of casual labourers even for specific works for specific periods in Projects and Electrification Circles also should not be resorted to. Therefore, in view of the ban on engagement of casual labourers the claim of the Petitioner is not maintainable. Since the Petitioner was engaged through contractor in the Railway Electrification Project which was meant for a specific period and after completion of the project work his employment is terminated and he is not eligible to claim for regularization in view of above letters and his status as contract labour.

16. Now the question arises whether there existed employee and employer relationship between the claimant and Respondent. Petitioner has admitted the fact that he was doing the work as a contract labourer in the Respondent Department. Further, to prove the employment there has to be a strict evidence to show some nexus between the claimant and the Respondent. This can be any kind such as appointment letter, monthly payment slip, deduction of Provident Fund, payment of any dues, which can show that he was in the employment of the Respondent. **In the case of Automobile Association of Upper India vs. Presiding Officer Labour Court-II, 2006 LLR page 851 wherein the** Hon'ble Delhi High Court held, " Engagement and appointment in service can be established directly by the existence and production of appointment letter, a written agreement or by circumstantial evidence of incidental and ancillary records which would be in the nature of attendance register, salary registers, leave records, deposit of Provident Fund contribution and employees state insurance contribution etc.. The same can be produced and proved by the workers or he can call upon and caused the same to be produced and proved by calling for witnesses who are required to produce and prove these records."

17. But in the present case the claimant Petitioner has not produced any single piece of evidence showing that he was issued appointment letter by the Respondent. In fact, he has not disclosed date of actual joining of the employment as casual labour of the Respondent. Therefore, the contention of the Petitioner that he was casual labourer is not found to be proved by his evidence. Hence, he was not covered under Regularization Scheme rather he was contract labour as he has admitted in petition.

Thus, Points No.I & II are answered accordingly.

18. **Point No.III**: In view of the above discussion, it is clear that the Petitioner was not a casual labourer, rather had worked as contract labour for the period from 1994 to 1996. Therefore, Petitioner is not eligible to be regularized as a casual labour in the Respondent employment. The impugned order dated 27.4.2010passed by Respondent needs no interference and petition is liable to be dismissed. In view of the finding given in Points No.I & II, the Petitioner is not entitled to any relief as prayed for regularization or reengagement. However, the Respondent has submitted that this Tribunal has disposed of LC No.8/2012 vide its order dated 29.2.2020 and granted relief of compensation to the Petitioner. Therefore, in view of the above, Petitioner is liable for getting the compensation of Rs.50,000/.

Thus, Point No.III is answered accordingly.

ORDER

In view of the findings given above, it is hereby ordered: The petition of the Petitioner is allowed in part. The Respondents are directed to pay a sum of Rs.50000/- (Fifty thousand rupees) to the Petitioner towards compensation within four months from the receipt of this order, failing which the Petitioner is at liberty to take appropriate steps according to Law.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 7th day of March, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Devambotla Balachowdeshwara Sarma	MW1: Nil

Documents marked for the Petitioner

Ex.W1: Photostat copy of the Order dt 27-4-2010

Ex.W2: Photostat copy of the Representation of WW1 dt.3.3.2010

Ex.W3: Photostat copy of order passed in OA. No. 1229/2011

Ex.W4: Photostat copy of order passed in OA. No. 100/2010

Ex.W5: Photostat copy of order passed in CA. No. 101/2010

Ex.W6: Photostat copy of proceeding of respondent dt 9-5-2007

Ex.W7: Photostat copy of proceeding of Director, BSNL Railway Electrification Project Secunderabad dt. 12-9-2002

Ex.W8: Photostat copy of list of candidates issued by Div. Engineer, Secunderabad dt. 11-9-2002

Ex.W9: Photostat copy of proceeding Dt. 13-11-2007 providing information under RTI Act

Ex.W10: Photostat copy of letter dt.21-11-2000 with regard to temporary status

Ex.W11: Photostat copy of Days Book signed by authority

Ex.W12: Photostat copy of Identity card of petitioner

Ex.W13:Copy of reply filed in OA No.1229/2011

Documents marked for the Respondent

NIL

नई दिल्ली, 16 मई, 2023

का.आ. 1115.—औद्योगिक विवाद अधिनियम, 1947 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक प्रबंधतंत्र के सबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण पटना के पंचाट संदर्भ संख्या (15 (C) of 2018) को प्रकाशित करती है ।

[सं. एल-12011/71/2018-आईआर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 16th May, 2023

S.O. 1115.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (15 (C) of 2018) of the Industrial Tribunal-cum-Labour Court Patna as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-12011/71/2018– IR(B-1I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL, PATNA.

Reference Case No.:- 15 (C) of 2018

Between the management of (1) The Circle Head, Punjab National Bank, Circle Office, G.M. Road, P.O Lalbagh, Darbhanga-846004 (2) The Manager, Punjab National Bank, Raj Nagar Branch, PO & PS: Raj Nagar, Dist.- Madhubani, Madhopur (Pb.)547235 and their workman Shri Chandan Kumar, Part Time Sweeper through represented by the President, Bank Employees Federation, Bihar, Saboo Republic, 2nd Floor, Behind Republic Hotel, Patna (Bihar) 800001.

For the management:- Mrs. Preeti, Dy. Manager, HRD.
For the workman:- Sri B. Prasad, President, Bank Employees Federation, Bihar.

Present:- MANOJ SHANKAR, Presiding Officer, Industrial Tribunal, Patna.

AWARD

Patna, dated- 14th November, 2022

By the adjudication order no.- L-12011/71/2018-IR (B-II) New Delhi, dated- 16.11.2018 the Govt. of India, Ministry of Labour, New Delhi has referred under clause (d) of sub-section-(1) and sub-section-(2A) of section-10 of the Industrial Dispute Act, 1947, (hereinafter to be referred to as "the Act"), the following dispute between (1) The Circle Head, Punjab National Bank, Circle Office, G.M Road, P.O Lalbagh, Darbhanga- 846004 (2) The Manager, Punjab National Bank, Raj Nagar Branch, P.O- & P.S: Raj Nagar, Dist.- Madhubani, Madhopur (Pb.)-547235 and their workman Shri Chandan Kumar, Part Time Sweeper through represented by the President, Bank Employees Federation, Bihar, Saboo Republic, 2nd floor, Behind Republic Hotel, Patna (Bihar)- 800001 for adjudication to this tribunal:-

SCHEDULE

"Whether the action of the management of Punjab National Bank, in not regularizing service of Shri Chandan Kumar,

Part Time Sweeper allegedly working from 11.05.2016 at Raj Nagar Branch, Dist. Madhubani and keeping him on daily wages since last 2 years, is justified? If not, to what relief the workman concerned is entitled to?

2. After receipt of the reference / notification of this tribunal notices were issued to the both parties vide through retrospective post accordingly both the paties appeared on 26.02.2019. The workman has been represented by Sri B. Prasad of the said union. This tribunal further finds that on 28.03.2019 both the parties have filed their respective pairvi at the same time the management side has also filed withdrawal application of the workman Sri Chandan Kumar bearing the signature of the workman and the same be plalced before this tribunal by the management side. This tribunal further finds that after withdrawal application made by workman, workman never appeared before this tribunal and did not file any statement of claim. However, tribunal regularly directed to the workman to appear before this tribunal and to file statement of claim., if any. But workman did not turn-up. Record also shows that both parties became absent from 24.02.2020 to 28.11.2021 due to covid pandemic thereafter management side started appearing in this proceeding but the workman side remained absent. This tribunal again issued notice to the workman through registered post but he did not appear for the same. It has been submitted by the management side workman has already withdraw his claim on 12.03.2019 that itself shows that the workman has no grievance at all and he has no dispute with the management. This tribunal further finds that due to withdrawal petition filed by the workman produced by the management side established this facts. Workman Sri Chandan Kumar has no dispute at all.

3. In view of the above aforesaid discussion this is a considered opinion of this tribunal since workman has no dispute, hence this tribunal has no alternative but to pass "No Dispute Award" in this case. Thus this tribunal pass "No Dispute Award" accordingly. This award is eff after date of publication in gazette.

This is my award accordingly.

Dictated & Corrected by me.

MANOJ SHANKAR, Presiding Officer

नई दिल्ली, 17 मई, 2023

का.आ. 1116.—औद्योगिक विवाद अधिनियम, 1947 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाइटेड बैंक ऑफ इंडिया प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण पटना के पंचाट संदर्भ संख्या (18 (C) of 2019) को प्रकाषित करती है ।

[सं. एल-12011/38/2019-आईआर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 17th May, 2023

S.O. 1116.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (18 (C) of 2019) of the Industrial Tribunal-cum-Labour Court Patna as shown in the Annexure, in the industrial dispute between the management of United Bank of India and their workmen.

[No. L-12011/38/2019– IR(B-1I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA.

Reference Case No.:- 18 (C) of 2019

Between the management of (1) General Manager (HR), United Bank of India, Head Office, 11, Hemant Basu Sarani, Kolkata-700001 (2) Chief Regional Manager, United Bank of India, Regional Office, Dr. Rajendra Prasad Path, Station Road, Katihar (Bihar)-854103 and Their workmen Sri Kumar Manoj Anand & 4 others represented through the Regional Secretary, Union Bank of India Employee's Union, C/O- Rajendrapath Branch, P.K. Bhattacharya Road, Patna, Bihar- 800001.

For the management:- Sri Nand Mohan Das, Sr. Manager, P.N.B, Circle Office, Darbhanga.
For the Workman:- himself present.

Present:- MANOJ SHANKAR Presiding Officer, Industrial Tribunal, Patna.

AWARD

Patna, dated- 31st March, 2022

By the adjudication order no.-L-12011/38/2019-IR(B-II) dated- 18.11.2019 the Govt. of India, Ministry of Labour, New Delhi has referred under clause (d) of sub-section-(1) and sub-section-(2A) of section-10 of the Industrial Dispute Act, 1947, (hereinafter to be referred to as " the Act"), the following dispute between The management of (1) General Manager (HR), United Bank of India, Head Office, 11, Hemant Basu Sarani, Kolkata-700001 (2) Chief Regional Manager, United Bank of India, Regional Office, Dr. Rajendra Prasad Path, Station Road, Katihar (Bihar)-854103 and Their workmen Sri Kumar Manoj Anand & 4 others represented through the Regional Secretary, Union Bank of India Employee's Union, C/O- Rajendrapath Branch, P.K. Bhattacharya Road, Patna, Bihar-800001for adjudication to this tribunal:-

SCHEDULE

"Whether the action of the management of United Bank of India, Katihar Region, in denying the pay fixation in respect of Shri Kumar Manoj Anand & 4 others (list attached), Ex-Servicemen, re-employed by the Bank Management is justified? If not, to what relief the workmen concerned are entitled to?"

2. After receipt of the reference / notification, notices were issued to the parties concerned. Management appeared before this tribunal but neither workmen nor that representative appeared before this tribunal.

3. From perusal of the record, it appears to me that several notice were issued to the workmen concerned but they never appeared before this tribunal, then registered notice was given to the concerned parties but notice returned back in this tribunal with the endorsement union bank is not in Bhattacharya Road, Patna. Letter no.- 18.01.2022 sent by the Sunil Kumar Goyal, General Manager, Punjab National Bank, Zonal Office, HRD, United Tower, 11, Hemanta Basu Sarani Kolkata- 700001 which was received in this tribunal on 25.01.2022 mentioning therein that United Bank of India has since been amalgamated with Punjab National Bank w.e.f 01.04.2020 and since the matter falls within the jurisdiction of Bank's Patna Zone, for further course of action in the matter, future correspondences may be made to Punjab National Bank, Patna, Zonal Office situated at 2nd Floor, Chanakhya Towers, 'R' Block Patna-800001. On 14.05.2020 representative of the management Sri Ved Prakash, Manager, Law appeared before this tribunal and filed a written submission along with document on behalf of the United Bank of India, Katihar Region and submitted that bank has already done fitment and fixation of the payment, and the same has also been communicated to the all the following workmen as per index of schedule of the notification of reference. On 08.03.2022 Nand Mohan Das, Sr. Manager appeared and filed a petition with application of Mr. Alok Ranjan, Ex-Servicemen, Mr. Sanjeet Kumar working as SWO-A in Katihar, Smt. Kanchan Bharti, SWO-A and Mr. Manoj Anand, Ex-serviceman working as SWO in Jhanjharpur Branch (Darbhanga Circle) stating therein that fitment of salary has been done by the bank so they have submitted written petition for withdrawal of the above case.

4. Ultimately on 08.03.2022 representative of the management himself appeared before this tribunal and filed a petition for withdrawal of the instant reference case because grievance of salary of ex-servicemen employee namely 1. Kumar Manoj Anand 2. Sanjeet Kumar, 3. Kanchan Bharti, 4. Manoj Kr. Pandit has been redressal by the bank and all the workmen are satisfied from their fitment of salary so they submitted written petition for withdrawal of the above case and also make prayer to pass No Dispute Award.

5. Heard both the parties.

6. On the aforesaid basis one of the workman witness namely Sri Manoj Kumar Pandit appeared before this tribunal as W.W-1 who deposed that he and four other workmen namely 1. Kumar Manoj Anand, 2. Sanjeet Kumar, 3. Kanchan Bharti, 4. Alok Ranjan, all the ex-servicemen have placed their grievance regarding their salary before the bank and the same issue was raised before the conciliation officer but conciliation was failed than matter is referred before this tribunal. Al the aforesaid workmen were working in United Bank of India later on the bank is merged in the bank of Punjab National Bank. All the issues of the aforesaid workmen have been settled by the Punjab National and now the matter is resolved by the Punjab National Bank. W.W.-1 also stated that no dispute exist regarding pay fixation of all the concerned workmen. W.W.-1 further stated that all the workmen have filed application bearing their signature before the Punjab National Bank for the withdrawal of the case as their grievance is settled by the bank.

7. In view of the aforesaid facts, & circumstances, this tribunal is of the view that the petition dated- 08.03.2022 filed by the management along with the applications of workmen regarding their redressal of pay fixation disputes and submission as made above. This is the considered opinion of the tribunal " No Dispute" exists, accordingly. "No Dispute Award" is passed in the light of petition dated- 08.03.2022 filed by management and the evidence as placed by the workmen. This award is effected after date of publication in gazette.

This is my award accordingly.

Dictated & Corrected by me.

MANOJ SHANKAR, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 1117.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार लेडी हार्डिंग मेडिकल कॉलेज और श्रीमती एसके अस्पताल, कनॉट प्लेस, नई दिल्ली; सुरजा इलेक्ट्रिकल्स, सी/ओ सुचेता कृपलानी अस्पताल, लेडी हार्डिंग मेडिकल कॉलेज, कनॉट प्लेस, नई दिल्ली, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री प्रशांत कुमार, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह- श्रम न्यायालय-2 नई दिल्ली

के पंचाट (संदर्भ संख्या 74/2021) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.05.2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-96-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2023

S.O. 1117.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 74/2021) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to Lady Harding Medical College & Smt. S.K Hospital, Connaught Place, New Delhi ; Surja Electricals, C/o Sucheta Kriplani Hospital, Lady Harding Medical College, Connaught Place, New Delhi, and Shri Prashant Kumar, Worker, which was received along with soft copy of the award by the Central Government on 24.05.2023.

[No. L-42025-07-2023-96-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 74/2021

Date of Passing Award- 10th May, 2023

Between:

Shri Prashant Kumar s/o Sh. Late Sh. Kishan Lal,
R/o C-72, Street No. 03, Gagan Vihar, Gokul Puri,
Delhi-110094… ….Workman

Versus

1 . Lady Harding Medical College & Smt. S.K Hospital,
604 , Shaheed Bhagat Singh, Marg, Connaught Place,
New Delhi-110002.

2. Surja Electricals,
C/o Sucheta Kriplani Hospital, Lady Harding Medical College,
604, Shaheed Bhagat Singh Marg, Connaught Place,
New Delhi-110002. …..Managements

Appearances:-

Claimant in person.
Ms. Varsha Nagar, , Ld.A/R for the management no. 2 i.e Surja Electricals.

AWARD

This is an application filed u/s 2A of the Id. Act by the claimant wherein he has alleged illegal termination with a prayer for reinstatement in service with full back wages and consequential benefits. Notice being served, the mgt appeared through it's A/R . When the matter was pending for framing of issues, a proposal was advanced by the parties for amicable settlement. The matter was adjourned to 11.02.2023 for settlement during the National Lok Adalat. Prior to that date on 10th Feb.2023 the claimant gave a statement to the effect that he has settled the dispute with the mgt and does not have any grievance against the mgt for which he wants to withdraw the proceeding. In view of the said statement the matter was decided during the National Lok Adalat held on 11.02.2023 and this no dispute award has been passed.

Hence ordered.

ORDER

The claim petition is dismissed for want of dispute raised by the claimant and this award is accordingly passed.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 31 मई, 2023

का.आ. 1118.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय, आसनसोल के पंचाट (एल. सी. आवेदन संख्या 49/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2023 को प्राप्त हुआ था।

[सं. एल-22013/01/2023-आईआर(सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 31st May, 2023

S.O. 1118.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (L.C.Application No. 49/2015*)* of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the Management of E.C.L. and their workmen, received by the Central Government on 30*/05/2023*

[No. L-22013/01/2023 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Present : Shri ANANDA KUMAR MUKHERJEE, Presiding Officer CGIT-cum-LC, Asansol

L. C. Application NO. 49 OF 2015

PARTIES : Lakhi Kanta Roy

v/s

Management of Ratibati Workshop of M/s. ECL

REPRESENTATIVES :

For the petitioner/appellant: None appeared
For the Management of M/s. ECL: Mr. P. K. Das, learned advocate

INDUSTRY: Coal
STATE : WEST BENGAL
Dated : 21.04.2023

AWARD

1. This application under section 33 (C)(2) of the Industrial Dispute Act, 1947 has been filed by the petitioner, an ex-employee of Ratibati Workshop under Eastern Coalfields Limited, praying for an award in his favour for directing the Agent, Ratibati Workshop of ECL to pay him the legal dues along with interest in respect of his quarterly bonus arrear for the period from 01.01.2008 to 31.01.2010 amounting to Rs. 12,262.29, Exgratia/PPLB for the same period amounting to Rs. 1,266.22, Earned leave wages for one day amounting to Rs 1,164.12, 2% Pension for arrear wages from 01.01.2008 to 31.01.2010 amounting to Rs. 3,072.00 and less payment of Gratuity of Rs. 30.00 after deducting a tax of Rs. 49,759 as the amount of Rs. 7,98,097.90 has already been received.

2. Initially, Mr. Gaya Prasad Mal, learned advocate appeared on behalf of the petitioner, Lakhi Kanta Roy. The Agent, Ratibati Worksop filed a written statement opposing the contentions of the petitioner. It is stated in the petition that Lakhi Kanta Roy has retired from the post of Foreman on 31.01.2010 and completed 40 years and 10 months of service. The petitioner was entitled to get Earn leave wages for 103 days also got one day of proportionate leave for the month of January, 2010, i.e. total period of leave of 104 days in respect of which he has been paid the Earned Leave wages in the revised scale of NCWA. It is denied on behalf of the Management that the petitioner was entitled to 105 days of Earned Leave encashment as he was paid Earned Leave wages at the revised rate. Regarding his claim of quarterly bonus and Exgratia it is the case of the Management that the payment of quarterly bonus and exgratia has already been made to the workman following the rules and provisions. The case of the Management is that the petitioner is not entitled to 2% of pension amounting to Rs. 3,072 as pension has already been settled and paid to him in consonance with the Coal Mines Pension Scheme. According to the opposite party/Management of ECL, the petitioner has been paid all legal dues along with his Gratuity amounting to Rs. 7,98,097.90 and in support of such statement a calculation sheet has been enclosed.

3. In his affidavit-in-chief, Lakhi Kanta Roy has reiterated his claim made in his application filed under section 33 (C)(2) of the Industrial Dispute Act. No oral evidence has been adduced by any of the party. By order dated 06/02/2023 the Management of Ratibati Workshop was directed to file a statement of accounts in respect of claims made by the petitioner. On 29/03/2023, the Agent, Ratibati Workshop filed the statement of accounts along with supporting documents which has been admitted in evidence and marked as Exhibit M-1. On a perusal of document it appears to me that quarterly arrear bonus amounting to Rs. 12304.60 has already been paid to the workman through cheque no. 039141 dated 30.12.2013. Ex-gratia/PPLB amounting to Rs. 12460.00 has been paid to him through cheque no. 942621 dated 11.10.2010. Earned Leave wages for 105 days including proportionate leave for the month of January, 2010 amounting to Rs. 101688.60 has been disbursed to him through cheque no. 943846 dated 26.04.2010. Claim for 2% pension towards arrear wages is said to have been deposited before CMPFO and petitioner is getting revised pension. The Management in support of their contention has filed an extract of PPO of Lakhi Kanta Roy as Annexure D**.** Lastly, the statement of account discloses that gratuity dues of Rs. 798097.90 has been paid to the petitioner through cheque no. 943845 dated 26.04.2010.

4. The petitioner has not turned up to controvert the reply made by the opposite party. Having considered the case and counter case of the parties I am constraint to hold that the petitioner has already received his retiral dues and is not entitled to get any further benefit as has been claimed by him. The application is found to be devoid of merit and the same is dismissed on contest.

Hence,

ORDERED

that the application under section 33(C)(2) of the Industrial Dispute Act filed by the petitioner has no merit and the same is dismissed on contest. Let copies of the Award be communicated to the Ministry under section 33(C)(4) of the Industrial Dispute Act for information.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 7 जून, 2023

का.आ. 1119.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 63/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.06.2023 को प्राप्त हुआ था।

[सं. एल-20012/209/2005-आईआर(सी.एम-I)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 7th June, 2023

S.O. 1119.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.63/2006) of the Central Government Industrial Tribunal-cum-

Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the Management of B.C.C.L. and their workmen, received by the Central Government on 02/06/2023

[No. L-20012/209/2005-IR(CM-I)]
MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

Reference: No. 63/2006

Employer in relation to the management of Kusunda Area of M/s. BCCL.

AND.

Their workman.

Present: Shri Dinesh Kumar Singh, Presiding Officer.

Appearances:

For the Employers :- None.
For the workman. :- None.

State : Jharkhand.
Industry:- Coal

Dated 30/06 /2022

AWARD

By Order No.L-20012/209/2005-(IR(CM-I)) dated 01.06.2006 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the demand of the Bihar Colliery Kamgar Union from the management of BCCL, Kusunda Area that Sh. Ahzid Ansari, Tipper Driver be regularised as Haulpack Operator justified? If so, to what relief is the workman entitled and from what date?"

2. The reference is received on 03/07/2006 by this Tribunal in which the Secretary, Bihar Colliery Kamgar Union, Dhanbad had been advised to submit statement of claim along with relevant document within fifteen days but the concerned union/workman did not appear before the Tribunal. However after receipt of the reference, both parties were noticed but neither the concerned union/workman nor the management appeared before the Tribunal. Now Case is pending since 03/07/2006 and workman/union as well as management is not appearing before Tribunal. so, it is felt that workman/union has lost its interest in this matter. Hence "No Claim" Award is passed. Communicate

D. K. SINGH, Presiding Officer

नई दिल्ली, 23 जून, 2023

का.आ. 1120.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 07/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.06.2023 को प्राप्त हुआ था।

[सं. एल-22012/97/2010-आईआर(सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 23rd June, 2023

S.O. 1120.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2011) of the Central Government Industrial Tribunal-cum-

Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the Management of E.C.L. and their workmen, received by the Central Government on 20/06/2023

[No. L-22012/97/2010 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

Present: Shri ANANDA KUMAR MUKHERJEE, Presiding Officer C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE No. 07 OF 2011

PARTIES: Ram Jatan Roy

Vs.

Management of Manderboni Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. S. K. Pandey, Union representative.
For the Management: Mr. P. K. Goswami, learned advocate.

INDUSTRY: Coal.
STATE: West Bengal.
Dated: 31.05.2023

AWARD

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour, vide its Order **No. L-22012/97/2010-IR(CM-II)** dated 14.03.2011 and Corrigendum dated 23.08.2011 has been pleased to refer the following dispute between the employer, that is the Management of Manderboni Colliery under Pandaveswar Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the Management of Management of Manderboni Colliery under Pandaveswar Area of M/s. ECL in dismissing Shri Ram Jatan Roy Underground Loader, UM No. 766126 w.e.f. 27.08.2009 is legal and justified? To what relief the workman is entitled to? "

1. On receiving Order **No. No. L-22012/97/2010-IR(CM-II)** dated 14.03.2011 and Corrigendum dated 23.08.2011 from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 07 of 2011** was registered on 25.03.2011 and an order was passed issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. The case was fixed up on 23.05.2023 for appearance of the dependents of the workman and their proper representation. Mr. P. K. Das, learned advocate appeared for the Management of Eastern Coalfields Limited. No steps have been taken by legal heirs of Late Ram Jatan Roy, the dismissed workman. On repeated calls at 2:00 PM no union representative from Colliery Mazdoor Congress (HMS) has turned up. Since no steps have been taken by the legal representatives of the dismissed workman and union, the Industrial Dispute stands dismissed.

Hence,

ORDERED

that the Reference case is dismissed. An award be drawn up in the light of the above finding. Let copies of the Award in duplicate be communicated to the Ministry of Labour and Employment, Government of India for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Office,

नई दिल्ली, 23 जून, 2023

का.आ. 1121.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, आसनसोल के पंचाट (एल. सी. आवेदन सं. 03/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.06.2023 को प्राप्त हुआ था।

[सं. एल-22013/01/2023--आईआर(सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 23rd June, 2023

S.O. 1121.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (L. C. APPLICATION No. 03/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the Management of E.C.L. and their workmen, received by the Central Government on 20/06/2023

[No. L-22013/01/2023 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

Present: Shri ANANDA KUMAR MUKHERJEE, Presiding Officer, C.G.I.T-cum-L.C., Asansol.

L. C. APPLICATION NO. 03 OF 2012

PARTIES: Arjun Paswan, Sarjun Paswan, Bhim Paswan,
Nakul Paswan, and Arti Paswan

Vs.

(1) General Manager, Salanpur Ara, ECL,
(2) Agent, Mohanpur Colliery, ECL, and
(3) Manager, Mohanpur Colliery, ECL

REPRESENTATIVES:

For the Union/Petitioners: Mr. Ranjit Banerjee, union representative.
For the Management: Mr. P. K. Das, learned advocate.

INDUSTRY: Coal.
STATE: West Bengal.
Dated: 22.05.2023

AWARD

1. This application under section 33 (C)(2) of the Industrial Dispute Act, 1947 has been filed by the petitioners, against opposite party members stating therein that the petitioners are dependents of Late Krishna Dusad who was posted as Driller at Mohanpur Colliery of Eastern Coalfields Limited (hereinafter referred to as ECL) bearing U. M. No. 167566. Krishna Dusad, father of petitioner no.- 1 worked at Mohanpur Colliery of ECL for more than twenty-seven years and he died on 20.05.2000 while he was in service of the company leaving behind four sons and one daughter as legal heirs. Petitioner No.- 1 is the eldest son of the deceased workman who used to look after petitioners No. 2 to 5. Late Sumitra Devi, wife of Late Krishna Dusad died on 30.03.1996, prior to the death of her husband. After death of his father, petitioner no.- 1 got employment under ECL and appointment letter was issued on 03.11.2001. It is the case of the petitioner that the Management of ECL is yet to pay his father's dues such as

Quarterly Bonus of Rs.1,037.42/- ending with March 2000, Quarterly Bonus of Rs.335.76/- ending with June, 2000, P.P.L.B. from 1999 to 2000 amounting to Rs.1,400/- and Final Arrear Wages as per National Coal Wage Agreement (hereinafter referred to as NCWA) - VI amounting to Rs.42,947.33/-, which sums upto Rs.45,720.51/- along with Interest of Rs.32,918.40/-, which is a total claim of Rs.78,638.91/- (Rupees seventy-eight thousand six hundred thirty-eight and ninety-one paise only). It is urged that petitioner no.- 1 is entitled the said amount from ECL and claimed that the Management should pay the said amount to petitioner no.- 1 immediately.

2. The Management filed objection against the claim of the petitioner and stated that the following dues of Late Krishna Dusad have remained unpaid. According to employer company the unpaid amount is Rs.45,720.51/-. Further case of the opposite party is that the ex-employee expired on 20.05.2000 while in service and his son got employment in ECL in the year 2011. After death of Krishna Dusad, some amount had remained unclaimed due to absence of proper nominee and legal heirs and the same was awaiting approval of the competent authority. Arjun Paswan filed affidavit-in-chief on 17.12.2015 reiterating his claims in respect of outstanding dues of his deceased father and also Interest of Rs.32,918.40/-. In the course of cross-examination claims of the petitioner was contradicted on behalf of the Management of ECL which the witness has successfully rebutted. For reasons best known to the company the hapless dependents of the deceased employee had to wait for eleven years before approval was actually accorded by the competent authority. On the date of hearing of argument, petitioner no.- 1 was directed to produce No Objection Certificate from other legal heirs and the Management to file Calculation Sheet or any Memorandum of Settlement in respect of claims made by the petitioner.

3. On 02.05.2023 Arjun Paswan appeared in person accompanied by Mr. Ranjit Banerjee, Vice President of West Bengal Khan Mazdoor Sangh (UTUC) and submitted that a settlement has been reached between Arjun Paswan and the representative of the Management namely Subhas Chandra Mondal, Project Officer/ Agent, Mohanpur Group of Mines, Salanpur Area and Dr. Bidhan Mukherjee, Assistant Manager (Personnel), Mohanpur Colliery, Salanpur Area in presence of the union representative and witness of the Management. Memorandum of Settlement in Form 'H' in three pages has been filed. According to terms of settlement the unpaid arrear wages of Late Krishna Dusad amounting to Rs.47,213.51/- which includes quarterly bonus of Rs.1,373.18/-, PLRS of Rs.2,893/- and unpaid wages of Rs.42,947/- without any interest is payable to the L. C. Applicant, in consideration the petitioner agreed to withdraw the L. C. Application No. 03 of 2012 filed before the Central Government Industrial Tribunal -cum- Labour Court, Asansol. It appears from the foregoing averments that the petitioner accepted the unpaid arrear wages of his father without any interest and settled the matter. Along with the Memorandum of Settlement, a No Objection Certificate was issued in favour of Arjun Paswan by the other legal heirs stating that the cheque amount may be paid to their elder brother. A receipt relating to SBI Cheque bearing No. 767451 dated 27.03.2023 of Rs.47,213.51/- (Rupees forty-seven thousand two hundred thirteen and fifty-one paise only) has been filed.

4. Having considered materials on record along with the No Objection Certificate and submissions made by the union representative as well as Mr. P. K. Das, learned advocate for ECL, it appears to me that the subject matter has been settled between the parties in terms of Memorandum of Settlement dated 21.04.2023. L. C. Application is accordingly disposed of in terms of settlement in three pages. Let the terms of settlement be treated as part of this Award.

Hence,

ORDERED

that the L. C. Application filed under section 33(C)(2) of the Industrial Dispute Act is disposed of in the terms of settlement dated 21.04.2023, treating the Memorandum of Settlement as part of the Award. Copies of the Award in duplicate be sent to the Ministry of Labour, Govt. of India, New Delhi under section 33 C (4) of Industrial Dispute Act, 1947 for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 27 जून, 2023

का.आ. 1122.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टील अथॉरिटी ऑफ़ इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और श्री बीरेंद्र कुमार सिंह के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद पंचाट (रिफरेन्स न. -29/2017) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2023 को प्राप्त हुआ था।

[सं. जेड -16025/04/2023-आईआर(एम)-46]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th June, 2023

S.O. 1122.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 29/2017) of the Central Government Industrial Tribunal cum Labour Court-1, Dhanbad as shown in the Annexure, in the Industrial dispute between the employers in relation to Steel Authority of India Limited and Shri Birendra Kumar Singh which was received along with soft copy of the award by the Central Government on 27.06.2023.

[No. Z-16025/04/2023-IR(M)-46]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S (2A) (1)(2)of I.D. Amendment Act. 1947.

I.D No. 29/2017

Birendra Kumar Singh
Vill- Parashbaniya
P.O- Khas Jeenagora
Dist Dhanbad .....Applicant

Vs

The General Manager
SAIL (Colliery Division)
Chasnalla Colliery
P.O- Chasnalla
Distt- Dhanbad .....Opp.Party

Present :-Dr. S.K.THAKUR, Presiding Officer

Appearances:

For the Applicant :- Shri Birendra Kumar Singh (In person)
For the Opp.Party :- Shri D.K.Verma, Advocate

State : Jharkhand. Industry-Coal

Dated-: 27/04/ 2023

AWARD

One I .D Application of Sri Birendra Kumar Singh Vs General Manager (Colliery Division of M/S SAIL is received U/S 2A (1)(2) of I.D Amendment Act 1947 and registered as I.D case No. 29 of 2017 as following dispute for adjudication in this Tribunal;

SCHEDULE

"Whether the action of the management of M/S SAIL. in Terminating/ dismissing the service of Sri Birendra Kumar Singh w.e.f 08.08.2017 is legal and justified? If not, to What relief the concerned workmen is entitled to?"

2. The I.D case is received on 09.10.2017. After receipt of I.D, both Parties are noticed. After notice the Opp.Party appears and files letter of authority, and subsequently workman left appearing before this Tribunal. Thereafter he did not take any step in this case. Case is pending since 09/10/2017. Management is also not appearing before the Tribunal.

3. Sri Birendra Kumar Singh , the Concerned workman appeared on 27.02.2023 and prayed for withdrawal of the case registered as I.D case No. 29/17 by this Tribunal. He also referred to written petition filed dated 27.02.2023 for withdrawal of the case on personal ground.

4. Sri D.K.Verma Ld Advocate on behalf of the Opp. Party is present and submitted that the Opp. Party has no objection as per the representation of the workman both in writing and before this Tribunal.

5. Considering submission from both side the application under referred I.D registered as I.D case No.29/2017 is allowed to be withdrawn and No claim award is passed. Communicate.

Let copy of this award be sent to the Appropriate Government as required under section 17 of the I.D Act for publication.

Dr. S. K.Thakur, Presiding Officer

नई दिल्ली, 27 जून, 2023

का.आ. 1123.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बिरला कॉर्पोरेशन लिमिटेड, बिरला सीमेंट वर्क्स, चित्तौरगढ़ के प्रबंधतंत्र के संबद्ध नियोजकों और श्री शंभूलाल मीणा, चित्तौरगढ़ के बीच अनुबंध में निर्दिष्ट औद्योगिक अधिकरण एवं श्रम न्यायालय, भीलवाड़ा, के पंचाट (रिफरेन्स न.-1/2016 एलसीआर) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2023 को प्राप्त हुआ था।

[सं. एल-29012/1/2016-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th June, 2023

S.O. 1123.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 1/2016 LCR) of the Industrial Tribunal cum Labour Court, Bhilwada as shown in the Annexure, in the Industrial dispute between the employers in relation to Birla Corporation Limited, Birla Cement Works, Chittorgarh and Shri Shambhulal Meena, Chittorgarh which was received along with soft copy of the award by the Central Government on 27.06.2023.

[No. L-29012/1/2016-IR(M)]

D. K. HIMANSHU, Under Secy.

अनुबंध

:: **श्रम न्यायालय, भीलवाड़ा** ::

पीठासीन अधिकारी : श्री सुशील कुमार शर्मा,(जिला न्यायाधीश संवर्ग).

प्रकरण संख्या : 1 सन् 2016 एल सी आर

शंभूलाल मीणा पुत्र श्री भैरूलाल मीणा, निवासी
—डाबर रावतों की चौकी, भेरडा रोड, चंदेरिया, जिला—चितौडगढ। ..प्रार्थी

: **बनाम** :

कारखाना प्रबंधक,बिरला कार्पोरेशन लि.,बिरला सीमेंट वर्क्स,
माधव नगर, चंदेरिया, जिला,जिला—चितौडगढ। ..विपक्षी

उपस्थित :

श्री रमेशचन्द्र दशोरा, अधिवक्ता—प्रार्थी की ओर से।
श्री आर.एस.चौहान,अधिवक्ता—विपक्षी की ओर से।.

:: **पंचाट** ::

दिनांक 27.2.2023

प्रार्थी को सेवा पृथक किये जाने के संबंध में भारत सरकार की अधिसूचना संख्याः एल—29012/1/2016—1 आईआर (एम) दिनांक 8.2.2016 के द्वारा अग्रलिखित विवाद इस न्यायालय को प्रेषित किया गया—

'क्या कर्मकार श्री शंभूलाल मीणा पुत्र श्री भैरूलाल मीणा को कारखाना प्रबंधक, बिरला कॉर्पोरेशन

लिमिटेड, बिरला सीमेंट वर्क्स, माधव नगर, चंदेरिया, जिला– चितौडगढ (राज0) द्वारा मौखिक आदेश दिनांक 2.7.2014 द्वारा नौकरी से निकालने व कार्य पर नहीं लेने की कार्यवाही विधि एवं न्यायसंगत है? यदि नहीं, तो प्रार्थी किस राहत का व कब से पाने का हकदार है?'

विवाद प्राप्त होने पर पक्षकारों को नोटिस जारी कर तलब किया गया।

प्रार्थी की ओर से क्लेम प्रार्थना पत्र प्रस्तुत कर जाहिर किया गया कि उसे विपक्षी ने आदेश दिनांक 15.10.1996 के द्वारा अस्थाई श्रमिक के रूप में हैवी इक्वीपमेंट ऑपरेटर के पद पर नियुक्त किया। तब से वह विपक्षी के यहां निरंतर कार्यरत रहा तथा समय– समय पर काल्पनिक गेप पैदा कर अलग– अलग नियुक्ति पत्रों के माध्यम से उसकी सेवा अवधि बढाई गई तथा दिनांक 2.7.2014 तक वह नियमित रूप से कार्यरत रहा। उसका कार्य संतोषप्रद रहा है। उसे न तो कभी कोई नोटिस दिया गया, न आरोपपत्र दिया गया, न कभी दंडित किया गया। दिनांक 2.7.2014 को बिना किसी आदेश के मौखिक रूप से उसे सेवा में लेने से इनकार कर दिया गया। सेवा पृथककरण से पूर्व उसे न तो कोई नोटिस दिया, न नोटिस के एवज में वेतन दिया, न उसे मुआवजा दिया गया। उससे कनिष्ठ श्रमिक कार्यरत है तथा नये व्यक्ति ठेकेदार के माध्यम से रखे जा रहे हैं। उसकी सेवा मुक्ति अधि0 1947 की धारा 25–जी व एच के तहत अवैध है। वह सेवा पृथककरण के बाद से ही बेरोजगार है। प्रार्थी ने समस्त वेतन परिलाभों सहित पुनः पूर्व पद पर नियोजित करवाने की प्रार्थना की।

विपक्षी की ओर से प्रस्तुत जवाब में 'प्रारंभिक कथन' के रूप में यह अंकित किया गया कि प्रार्थी के कथनानुसार विपक्षी द्वारा उसे दिनांक 2.7.2014 को नौकरी से निकाला है। प्रकरण के निस्तारण हेतु यह आवश्यक है कि प्रार्थी दिनांक 2.7.2014 को नियोजन में हो। दिनांक 2.7.2014 को प्रार्थी एवं विपक्षी के मध्य श्रमिक–नियोजक के संबंध नहीं होने से यह संभव नहीं है कि विपक्षी द्वारा प्राथी को मौखिक आदेश या अन्य किसी तरीके से दिनांक 2.7.2014 को नौकरी से निकाला हो। समझौता अधिकारी के समक्ष भी उत्तरदाता ने यह स्पष्ट कर दिया था कि दिनांक 2.7.2014 को प्रार्थी विपक्षी संस्थान के नियोजन में कार्यरत नहीं था। दिनांक 2.7.2014 को प्रार्थी ठेकेदार प्रहलाद सिंह के यहां कार्यरत था इसलिए प्रार्थी को किस तरह से सेवा पृथक किया गया यह मात्र ठेकेदार द्वारा ही स्पष्ट किया जा सकता है। प्रार्थी को संस्थान में आवश्यकतानुसार निश्चित समयावधि के लिए नियोजित किया गया था। उसे सर्वप्रथम दिनांक 15.10.1996 के आदेश से दिनांक 16.10.1996 से 3 माह के लिए, आदेश दिनांक 20.12.1996 से दिनांक 20.12.1996 से एक माह के लिए, आदेश दिनांक 21.4.1997 से दिनांक 22.4.1997 से 3 माह के लिए, आदेश दिनांक 8.2.1999 से दिनांक 8.2.1999 से एक माह के लिए, आदेश दिनांक 9.3.2005 से दिनांक 10.3.2005 से एक माह के लिए नियुक्त किया गया तथा आदेश दिनांक 7.4.2005 से अस्थाई नियुक्तिपत्र दिनांक 9.3.2005 के संदर्भ में एक माह के लिए दिनांक 9.4.2005 तक बढाया गया। इसके बाद उसका सेवाकाल एक माह के लिए दिनांक 9.5.2005 से आगे बढाया गया। संस्थान के आदेश दिनांक 25.5.2004 से संस्थान में दिनांक 25.5.2004 से एक माह के लिए हेवी इक्युपमेंट ऑपरेटर के पद पर नियोजित किया गया, आदेश दिनांक 26.6.2004 से अस्थाई सेवाकाल नियुक्तिपत्र दिनांक 25.5.2004 के संदर्भ में एक माह के लिए दिनांक 26.6.2004 से 25.7.2004 तक बढाया गया, अस्थाई सेवाकाल नियुक्तिपत्र दिनांक 25.5.2004 के संदर्भ में एक माह के लिए दिनांक 26.7.2004 से 25.8.2004 तक बढाया गया, आदेश दिनांक 4.10.2004 से संस्थान में दिनांक 5.10.2004 से व दिनांक 25.11.2004 से एक माह के लिए हेवी इक्युपमेंट ऑपरेटर के पद पर नियोजित किया गया, अस्थाई सेवाकाल नियुक्तिपत्र दिनांक 25.11.2004 के संदर्भ में 15 दिन के लिए दिनांक 25.11.2004 से आगे बढाया गया, आदेश दिनांक 11.5.2006 से दिनांक 12.5.2006 से व आदेश दिनांक 9.10.2006 से 10.10.2006 से एक माह के लिए, आदेश दिनांक 27.5.2010 से दिनांक 27.5.2010 से एक माह के लिए, आदेश दिनाक 5.2.2011 से दिनांक 7.2.2011 से 2 माह के लिए व आदेश दिनांक 20.9.2013 से दिनाक 21.9.2013 से तीन माह के लिए पूर्णया अस्थाई तौर पर हेवी इक्युपमेंट ऑपरेटर के पद पर नियोजित किया गया। इस प्रकार प्रार्थी को आवश्यकतानुसार अस्थाई रूप से निश्चित समयावधि के लिए नियोजित किया गया था। समयावधि समाप्त होने के साथ ही प्रार्थी का नियोजन भी स्वतः समाप्त होने से स्पष्ट है कि वह कभी भी नियमित/स्थाई नियोजन में नहीं रहा है और न संस्थान व प्रार्थी के मध्य श्रमिक –नियोजक के संबंध नहीं रहे हैं। समझौता अधिकारी के समक्ष स्पष्ट किया गया था कि प्रार्थी ठेकेदार के नियोजन में कार्यरत था और ठेकेदार प्रहलाद सिंह द्वारा ही उसे सेवा से पृथाक किया गया था। समझौता कार्यवाही के दौरान ठेकेदार प्रहलाद सिंह ने उसे सशर्त कार्य पर लेने हेतु प्रस्ताव दिया लेकिन प्रार्थी ने अनुचित लाभ प्राप्त करने की नियत से ठेकेदार के यहां कार्य करना

स्वीकार नहीं किया । प्रार्थी द्वारा दिनांक 20.12.2013 के बाद जो भी कार्य किया गया है वह ठेकेदार प्रहलाद सिंह के नियोजन में ही किया गया है तथा उस पर नियंत्रण ठेकेदार प्रहलाद सिंह का ही रहा है। प्रस्तुत रेफरेन्स में प्रार्थी विपक्षी संस्थान के नियोजन में नहीं होकर ठेकेदार के नियोजन में था, का कहीं हवाला नहीं है। प्रस्तुत रेफरेन्स अस्पष्ट है। प्रस्तुत रेफरेन्स में नौकरी से निकालने की तिथि 2.7.2014 अंकित है, लेकिन उक्त तिथि को प्रार्थी संस्थान में कार्यरत ही नहीं था बल्कि वह उस दिन ठेकेदार प्रहलाद सिंह के यहां कार्यरत था और ठेकेदार प्रहलाद सिंह द्वारा ही उसे दिनांक 2.7.2014 को सेवा से पृथक किया गया है। प्रार्थी द्वारा दिनाक 16.4.2012 से दिनांक 1.1.2013 तक अस्थाई रूप से मै0 वन्डर सीमेंट लि0 की माईन्स पर मै0 वीडीएच इको एनर्जी एंटरप्राईजेज प्रा.लि0. के यहां कार्य किया है। कलमवार जवाब देते हुए जाहिर किया गया है कि प्रार्थी को सर्वप्रथम दिनांक 15.10.1996 के आदेश से तीन माह के लिए अस्थाई रूप से नियोजित किया गया था। समयावधि समाप्त होने ही उसका नियोजन स्वतः समाप्त हो गया। इसके बाद जब भी आवश्यकता हुई प्रार्थी उपलब्ध रहा है तथा उसने अस्थाई तौर पर निश्चित समयावधि के लिए आकस्मिक प्रकृति का दैनिक दर से कार्य किया है। वह संस्थान में 'नियमित नियोजन' में नहीं रहा है। प्रार्थी ने दिनांक 7.7.2014 तक का भुगतान भी प्रहलाद सिंह ठेकेदार से प्राप्त किया है। वह संस्थान में नियोजित ही नहीं था इसलिए नोटिस देने आदि की आवश्यकता नहीं थी। प्रार्थी अधि0 1947 की धारा 25—एफ,जी व एच के प्रावधानों का लाभ प्राप्त करने का अधिकारी नहीं है। क्लेम प्रार्थना पत्र निरस्त करने की प्रार्थना की गई।

प्रार्थी की ओर से साक्ष्य में एड 1 शंभूलाल, ए ड 2 हेमराज के शपथपत्र पर बयान दर्ज करवाये गये ।

विपक्षी की ओर से साक्ष्य में एन ए ड 1 रघुनन्दन दाधीच के शपथपत्र पर बयान दर्ज करवाये गये ।

हमनें दोनों पक्षों को सुना एवं संपूर्ण पत्रावली का अध्ययन किया। दोनों पक्षों की ओर से लिखित बहस भी पेश की गई।

बहस के दौरान अधिवक्ता प्रार्थी ने प्रार्थना पत्र में उल्लेखित तथ्यों को दोहराते हुए वाछित अनुतोष प्रदान किये जाने का निवेदन किया।इसके विपरीत विपक्षी के विद्वान अधिवक्ता ने भी बहस के दौरान उनके अभिवचनों में उल्लेखित तथ्यों को दोहराते हुए क्लेम प्रार्थनापत्र खारिज करने की प्रार्थना की।

प्रार्थी ने अपना नियोजन विपक्षी के यहां दिनांक 15.10.1996 से अस्थाई श्रमिक के रूप में हैवी इक्विपमेंट ऑपरेटर के रूप में होना बताया है। विपक्षी ने भी अपने जवाब की मद सं0 एक में इस तथ्य को स्वीकार करते हुए कहा है कि प्रार्थी को मात्र तीन माह की समयावधि के लिए ही पूर्णतया अस्थाई तौर पर नियोजित किया गया था। इस तथ्य को स्वयं प्रार्थी ए ड 1 शंभूलाल ने अपनी जिरह में भी स्वीकार किया है तथा यह कहा है कि यह सही है कि प्रदर्श 1 में मुझे अस्थाई रूप से नियुक्त किया जाना अंकित है। प्रदर्श 1 का अवलोकन किया गया, जिसमें भी प्रार्थी का अस्थाई रूप से व आवश्यकता होने पर कार्य करने का उल्लेख किया गया है। नियुक्ति पत्र प्रदर्श 2 में भी नियुक्ति पूर्णतया अस्थाई होने व अवधि पूर्ण होते ही नियोजन स्वतः समाप्त होने का उल्लेख है, जिस पर प्रार्थी के नियुक्ति शर्तें स्वीकार करने के संबंध में हस्ताक्षर भी मौजूद हैं और जिस तथ्य को भी प्रार्थी शंभूलाल ने अपनी जिरह में स्पष्ट रूप से स्वीकार किया है। इसके अतिरिक्त प्रदर्श 3 लगायत प्रदर्श 12 एवं प्रदर्श 15 लगायत प्रदर्श 18 भी प्रार्थी के अस्थाई रूप से नियोजित किये जाने बाबत नियुक्ति पत्र हैं, जिनमें से प्रदर्श 3 व प्रदर्श 4 के द्वारा प्रार्थी की सेवाकाल तीन—तीन माह के लिए, प्रदर्श 5 लगायत प्रदर्श 10 के द्वारा उसका सेवाकाल एक—एक माह के लिए, प्रदर्श 11 के द्वारा उसका सेवाकाल 15 दिन के लिए, प्रदर्श 12 लगायत प्रदर्श 16 के द्वारा उसका सेवाकाल एक माह के लिए, प्रदर्श 17 के द्वारा उसका सेवाकाल दो माह के लिए एव प्रदर्श 18 के द्वारा उसका सेवाकाल तीन माह के लिए पूर्णतः अस्थाई तौर पर बढाये जाने व सेवा अवधि समाप्त होते ही उसका नियोजन स्वतः ही समाप्त होने का उल्लेख है, जिन सभी पर प्रार्थी शंभूलाल के सहमति के हस्ताक्षर भी मौजूद हैं। ये सभी दस्तावेजात प्रार्थी द्वारा ही प्रस्तुत किये गये हैं। प्रार्थी अपनी जिरह में भी यह स्पष्ट रूप से स्वीकार करता है कि यह सही है कि मुझे समय विशेष के लिए ही नियुक्ति पत्र दिये गये थे । हालांकि आगे यह गवाह काम निरंतर करना कहता है, लेकिन यह गवाह अपनी नियुक्ति नियुक्तिपत्र में अंकित समयावधि के लिए होने के तथ्य से अपनी जिरह में इनकार नहीं कर रहा है। आगे जिरह में यह गवाह यह स्पष्ट रूप से यह स्वीकार करता है कि यह सही है कि मैं जितने दिन काम करता था उतने दिनों की मजदूरी देते थे। प्रार्थी का गवाह ए ड 2 हेमराज भी अपने मुख्य परीक्षण स्वरूप प्रस्तुत शपथपत्र में प्रार्थी द्वारा 15.10.96 के आदेश पर अस्थाई श्रमिक के रूप में दिनांक 2.7.2014 तक कार्यरत होना स्वीकार करता है। इस

प्रकार स्वयं प्रार्थी द्वारा प्रस्तुत दस्तावेजात व प्रस्तुत साक्ष्य से ही यह पूरी तरह से साबित है कि प्रार्थी को विपक्षी के द्वारा अस्थाई तौर पर निश्चित समयावधि के लिए आवश्यकतानुसार नियोजित किया गया था तथा समयावधि समाप्त होते ही नियुक्तिपत्रों में अंकित शर्तों के अनुसार उसका नियोजन भी स्वतः ही समाप्त हो जाता था। ऐसी स्थिति में प्रार्थी का नियोजन अधि0 1947 की धारा 25–बी के तहत 'नियमित नियोजन' की तारीफ में आना साबित नहीं माना जा सकता है।

प्रार्थी ने प्रदर्श 19 लगायत प्रदर्श 27 पी.एफ. रसीदें पेश की है, जो नियुक्तिपत्रों में दर्शाई गई समयावधि की होना स्वयं प्रार्थी अपनी जिरह में स्वीकार करता है। विपक्षी गवाह एन ए ड 1 रघुनंदन दाधीच ने भी अपनी जिरह में यह स्वीकार किया है कि यह सही है कि हमारे यहां कार्यरत श्रमिकों की पी.एफ की राशि की कटौती होती है। इस प्रकार प्रार्थी द्वारा नियोजन की बताई जा रही अवधि में उसकी भविष्य निधि के मद में कटौती होना तो निर्विवादित है, लेकिन कटौती होने मात्र के आधार पर ही उसे विपक्षी का नियमित श्रमिक होना नहीं माना जा सकता है । इसके अतिरिक्त प्रदर्श 28 लगायत प्रदर्श 82 प्रार्थी की पे स्लीपें हैं,जो विपक्षी द्वारा जारी की गई है, लेकिन ऊपर किये गये विवेचन के अनुसार प्रार्थी का नियोजन आकस्मिक प्रकृति का होकर पूर्णतः अस्थाई था, जो निश्चित समयावधि के लिए आवश्यकतानुसार था तथा समयावधि समाप्त होते ही प्रार्थी का नियोजन भी नियुक्तिपत्रों में अंकित शर्तों के अनुसार स्वतः ही समाप्तः हो जाता था। अतः इस संबंध में प्रार्थी की ओर से किये गये तर्क स्वीकार किये जाने योग्य नहीं है।

इस संबंध में विपक्षी की ओर से प्रस्तुत न्यायिक दृष्टांत 2007 एल एलआर 1260 (एस.सी.) गंगाकिसान सहकारी चिनी मिल लि0 बनाम जैवी सिंह अवलोकनीय है, जिसमें मान0 उच्चतम न्यायालय द्वारा यह सिद्धांत प्रतिपादित किया गया है कि नियोजन की प्रकृति को साबित करने का भार स्वयं श्रमिक पर है। प्रार्थी का ऐसा अभिवचन नहीं रहा है कि उसका नियोजन 'नियमित नियोजन' हो, बल्कि उसने स्वयं ने अस्थाई श्रमिक के रूप में नियोजित होने का ही कथन किया है तथा उसका नियोजन पूर्णतः अस्थाई होना स्वयं उसके द्वारा प्रस्तुत नियुक्तिपत्रों व उसके द्वारा क्लेम प्रार्थनापत्र में किये गये अभिवचनो से भी साबित है। अतः उक्त न्यायिक दृष्टांत हस्तगत मामले में पूरी तरह से लागू होता है। उक्त न्यायिक दृष्टांत की रोशनी में भी प्रार्थी का नियोजन अधि0 1947 की धारा 25–बी के तहत 'नियमित नियोजन' होना साबित नहीं माना जा सकता है।

वकील विपक्षी का बहस के दौरान तर्क रहा है कि दिनांक 2.7.2014 को प्रार्थी उनके संस्थान में नियोजित नहीं था। अतः रेफरेन्स में सेवा पृथककरण की बताई गई तिथि 2.7.2014 को उसे सेवा से पृथक करना संभव नहीं था। वकील प्रार्थी ने इस संबंध में न्यायिक दृष्टांतए आई आर 1981 (एस.सी.) पेज 1626 भी पेश किया।

उक्त न्यायिक दृष्टांत का सम्मान पूर्वक अध्ययन किया गया। उक्त न्यायिक दृष्टांत की रोशनी में इस संबंध में विचार करें तो प्रार्थी अपने अभिवचनो व साक्ष्य स्वरूप प्रस्तुत अपने शपथपत्र में दिनांक 2.7.2014 को सेवा पृथक करना कहता है, लेकिन पत्रावली पर प्रदर्श एम 2–ए भुगतान रजिस्टर की प्रति उपलब्ध है, जिसके अवलोकन से जाहिर होता है कि प्रार्थी को जो भुगतान किया गया है वह दिनांक 6.7.2014 तक की अवधि के लिए किया गया है। उक्त प्रदर्श 2–ए पर अपने हस्ताक्षर होना स्वयं प्रार्थी अपनी जिरह में भी स्वीकार करता है। प्रार्थी की ओर से ऐसी कोई साक्ष्य पेश नहीं की गई है जिससे उसे दिनांक 2.7.2014 को सेवा से पृथक करना साबित होता हो। अतः प्रार्थी को विपक्षी के द्वारा दिनांक 2.7.2014 को सेवा से पृथक करना भी साबित नहीं माना जा सकता है।

इस संबंध में विपक्षी की ओर से प्रस्तुत न्यायिक दृष्टांत ए आई आर 1981 (एस.सी.) पेज 1626 मै0 फायरस्टोन टायर एंड रबर कं0 बनाम दी वर्कमेन भी अवलोकनीय है,जिसमें मान0 उच्चतम न्यायालय द्वारा यह अभिनिर्धारित किया गया है कि रेफरेन्स से परे जाकर न्यायालय द्वारा कोई निष्कर्ष नहीं दिया जा सकता है। उक्त न्यायिक दृष्टांत हस्तगत प्रकरण में पूरी तरह से लागू होता है। उक्त न्यायिक दृष्टांत की रोशनी में भी प्रार्थी को दिनांक 2.7.2014 को सेवा पृथक करना साबित नहीं माने जाने से वह कोई राहत प्राप्त करने का अधिकारी नहीं है।

विपक्षी की ओर से प्रस्तुत न्यायिक दृष्टांत 2000 (1) सी एल आर पेज 901 नरेन्द्र सिंह बनाम रा एंड फिनिशिंग प्रोडक्शन वगैरह में मान0 राज. उच्च न्यायालय द्वारा यह अभिनिर्धारित किया गया है कि मौखिक सेवा मुक्ति को भी समुचित साक्ष्य से साबित किया जाना आवश्यक है। हस्तगत मामले में प्रार्थी इस बारे स्वयं के बयान दर्ज कराये हैं। हालांकि उसकी ओर से ए ड 2 हेमराज को भी बतौर गवाह पेश किया है लेकिन उसकी साक्ष्य

विश्वसनीय नहीं मानी जा सकती है क्योंकि स्वयं हेमराज का भी सेवा पृथककरण का विवाद इस न्यायालय में लम्बित है, जिसमें भी इस प्रकरण के प्रार्थी शंभूलाल ने गवाह हेमराज के पक्ष में साक्ष्य दी है। सेवा पृथककरण बाबत प्रार्थी ने स्वयं की साक्ष्य के अतिरिक्त किसी अन्य स्वतंत्र गवाह को भी अपने समर्थन में पेश नहीं किया गया है। अतः उक्त विवेचन के आधार पर भी प्रार्थी अपने सेवा पृथकरण को भी साबित करवाने में असमर्थ रहा है।

उक्त समग्र विवेचन से यह पाया जाता हं कि प्रार्थी, विपक्षी का अस्थाई श्रमिक था, जिसे निश्चित समयावधि के लिए विपक्षी द्वारा आवश्यकतानुसार नियोजित किया गया था तथा प्रार्थी का नियोजन ऊपर किये गये विवेचन के अनुसार अधि0 1947 की धारा 25–बी के तहत 'नियमित नियोजन' की तारीफ में नहीं आता है। इसके अतिरिक्त प्रार्थी को विपक्षी के द्वारा दिनांक 2.7.2014 को सेवा से पृथक किया जाना भी साबित नहीं माना गया है। अतः वह विपक्षीगण से कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

अतः भारत सरकार द्वारा प्रेषित विवाद का उत्तर इस प्रकार दिया जाता है–

कर्मकार श्री शंभूलाल मीणा पुत्र श्री भैरूलाल मीणा को कारखाना प्रबंधक, बिरला कॉर्पोरेशन लिमिटेड, बिरला सीमेंट वर्क्स, माधव नगर, चंदेरिया, जिला– चितौडगढ (राज0) द्वारा मौखिक आदेश दिनांक 2.7.2014 के द्वारा नौकरी से नहीं निकाला गया है। प्राथी का नियोजन 'नियमित नियोजन' नहीं था। प्रार्थी किसी राहत का पाने का हकदार नहीं है।

पंचाट की प्रति भारत सरकार को प्रकाशनार्थ भेजी जाये।

सुशील कुमार शर्मा, न्यायाधीश

नई दिल्ली, 27 जून, 2023

का.आ. 1124.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बिरला कॉर्पोरेशन लिमिटेड, बिरला सीमेंट वर्क्स, चित्तौरगढ़ के प्रबंधतंत्र के संबद्ध नियोजकों और श्री हेमराज पुत्र श्री लालूराम मेवाड़ा, चित्तौरगढ़ के बीच अनुबंध में निर्दिष्ट औद्योगिक अधिकरण एवं श्रम न्यायालय, भीलवाड़ा, के पंचाट (रिफरेन्स न.-2/2016 एलसीआर) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2023 को प्राप्त हुआ था।

[सं. एल-29012/2/2016-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th June, 2023

S.O. 1124.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 2/2016 LCR) of the Industrial Tribunal cum Labour Court, Bhilwada as shown in the Annexure, in the Industrial dispute between the employers in relation to Birla Corporation Limited, Birla Cement Works, Chittorgarh and Shri Hemraj S/o Shri Laluram Mewada, Chittorgarh which was received along with soft copy of the award by the Central Government on 27.06.2023.

[No. L-29012/2/2016-IR (M)]

D. K. HIMANSHU, Under Secy.

अनुबंध

:: **श्रम न्यायालय, भीलवाड़ा** ::

पीठासीन अधिकारी : **श्री सुशील कुमार शार्मा,** (जिला न्यायाधीश संवर्ग).

प्रकरण संख्या : 2 सन् 2016 एल सी आर

श्री हेमराज पुत्र श्री लालूराम मेवाडा, निवासी–कृष्णानगर, .

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: **बनाम** :

कारखाना प्रबंधक,बिरला कार्पोरेशन लि0, बिरला सीमेंट वर्क्स, माधव नगर,
चंदेरिया, जिला,जिला–चितौडगढ। ..विपक्षी

उपस्थित :

श्री रमेशचन्द्र दशोरा, अधिवक्ता–प्रार्थी की ओर से।
श्री आर. एस. चौहान, अधिवक्ता–विपक्षी की ओर से।. .

:: **पंचाट** ::

दिनांक 27.2.2023

प्रार्थी को सेवा पृथक किये जाने के संबंध में भारत सरकार की अधिसूचना संख्याः एल–29012/2/2016–आईआर (एम) दिनांक 8.2.2016 के द्वारा अग्रलिखित विवाद इस न्यायालय को प्रेषित किया गया–

'क्या कर्मकार श्री हेमराज पुत्र श्री लालूराम मेवाडा को कारखाना प्रबंधक, बिरला कॉर्पोरेशन लिमिटेड, बिरला सीमेंट वर्क्स, माधव नगर, चंदेरिया, जिला– चितौडगढ (राज0) द्वारा मौखिक आदेश दिनांक 2.7.2014 द्वारा नौकरी से निकालने व कार्य पर नहीं लेने की कार्यवाही विधि एवं न्यायसंगत है? यदि नहों, तो प्रार्थी किस राहत का व कब से पाने का हकदार है?'

विवाद प्राप्त होने पर पक्षकारों को नोटिस जारी कर तलब किया गया।

प्रार्थी की ओर से क्लेम प्रार्थना पत्र प्रस्तुत कर जाहिर किया गया कि उसे विपक्षी आदेश दिनांक 18.4.2007 के द्वारा अस्थाई श्रमिक के रूप में हैवी इक्वीपमेंट ऑपरेटर के पद पर नियुक्त किया। तब से वह विपक्षी के यहां निरंतर कार्यरत रहा है तथा समय– समय पर काल्पनिक गेप पैदा कर अलग– अलग नियुक्ति पत्रों के माध्यम से उसकी सेवा अवधि बढाई जाती रही तथा दिनांक 2.7.2014 तक वह नियमित रूप से कार्यरत रहा। उसका कार्य संतोषप्रद रहा है। उसे न तो कभी कोई नोटिस दिया गया, न आरोपपत्र दिया गया, न कभी दंडित किया गया। उसे दिनांक 2.7.2014 को बिना किसी आदेश के मौखिक रूप से उसे सेवा में लेने से इनकार कर दिया। सेवा पृथककरण से पूर्व उसे न तो कोई नोटिस दिया, न नोटिस के एवज में वेतन दिया, न उसे मुआवजा दिया गया। उससे कनिष्ठ श्रमिक कार्यरत है तथा नये व्यक्ति ठेकेदार के काध्यम से रखे जा रहे हैं। उसकी सेवा मुक्ति अधि0 1947 की धारा 25–जी व एच के तहत अवैध है। वह सेवा पृथककरण के बाद से ही बेरोजगार है। प्रार्थी ने समस्त वेतन परिलाभों सहित पुनः पूर्व पद पर नियोजित करवाने की प्रार्थना की।

विपक्षी की ओर से प्रस्तुत जवाब में 'प्रारंभिक कथन' के रूप में यह अंकित किया गया कि प्रार्थी के कथनानुसार विपक्षी द्वारा उसे दिनांक 2.7.2014 को नौकरी से निकाला है। प्रकरण के निस्तारण हेतु यह आवश्यक है कि प्रार्थी दिनांक 2.7.2014 को नियोजन में हो। दिनांक 2.7.2014 को प्रार्थी एवं विपक्षी के मध्य श्रमिक –नियोजक के संबंध नहीं होने से यह संभव नहीं है कि विपक्षी द्वारा प्राथी को मौखिक आदेष या अन्य किसी तरीके से दिनांक 2.7. 2014 को नौकरी से निकाला हो। समझौता अधिकारी के समक्ष भी उत्तरदाता ने यह स्पष्ट कर दिया था कि दिनांक 2.7.2014 को प्रार्थी विपक्षी संस्थान के नियोजन में कार्यरत नहीं था। दिनांक 2.7.2014 को प्रार्थी ठेकेदार प्रहलाद सिंह के यहां कार्यरत था इसलिए प्रार्थी को किस तरह से सेवा पृथक किया गया यह मात्र. ठेकेदार द्वारा ही स्पष्ट किया जा सकता है। प्रार्थी को संस्थान में आवश्यकतानुसार निश्चित समयावधि के लिए नियोजित किया गया था। उसे सर्वप्रथम दिनांक 18.4.2007 के आदेश से संस्थान में दिनांक 19.4.2007 से 2 माह के लिए, आदेश दिनांक 20.5.2008 से संस्थान में दिनांक 20.5.2008 से एक माह के लिए, आदेश दिनांक 25.3.2009 से संस्थान में दिनांक 25.3.2009 से 14.4.2009 तक के लिए, आदेश दिनांक 5.2.2011 से संस्थान में दिनांक 7.2.2011 से 2 माह के लिए, आदेश दिनांक 20.9.2013 से संस्थान में दिनांक 21.9.2013 से 3 माह के लिए हेवी इक्युपमेंट ऑपरेटर के पद पर नियोजित किया गया। इस प्रकार प्रार्थी को आवश्यकतानुसार अस्थाई रूप से निश्चित समयावधि के लिए नियोजित किया गया था। समयावधि समाप्त होने के साथ ही प्रार्थी का नियोजन भी स्वतः समाप्त होने से स्पष्ट है कि वह कभी भी

नियमित/स्थाई नियोजन में नहीं रहा और न दिनाक 20.12.2013 के बाद संस्थान व प्रार्थी के मध्य श्रमिक–नियोजक के संबंध नहीं रहे हैं। समझौता अधिकारी के समक्ष स्पष्ट किया गया था कि प्रार्थी ठेकेदार के नियोजन में कार्यरत था और ठेकेदार प्रहलाद सिंह द्वारा ही उसे सेवा से पृथक किया गया था। समझौता कार्यवाही के दौरान ठेकेदार प्रहलाद सिंह ने उसे सशर्त कार्य पर लेने हेतु प्रस्ताव दिया लेकिन प्रार्थी ने अनुचित लाभ प्राप्त करने की नियत से ठेकेदार के यहां कार्य करना स्वीकार नहीं किया। प्रार्थी द्वारा दिनांक 20.12.2013 के बाद जो भी कार्य किया गया है वह ठेकेदार प्रहलाद सिंह के नियोजन में ही किया गया है तथा उस पर नियंत्रण ठेकेदार प्रहलाद सिंह का ही रहा है। प्रस्तुत रेफरेन्स में प्रार्थी विपक्षी संस्थान के नियोजन में नहीं होकर ठेकेदार के नियोजन में था, का कहीं हवाला नहीं है। प्रस्तुत रेफरेन्स अस्पष्ट है। प्रस्तुत रेफरेन्स में नौकरी से निकालने की तिथि 2.7.2014 अंकित है, लेकिन उक्त तिथि को प्रार्थी संस्थान में कार्यरत ही नहीं था बल्कि वह उस दिन ठेकेदार प्रहलाद सिंह के यहां कार्यरत था और ठेकेदार प्रहलाद सिंह द्वारा ही उसे दिनांक 2.7.2014 को सेवा से पृथक किया गया है। प्रार्थी द्वारा दिनाक 16.4.2012 से दिनांक 1.1.2013 तक अस्थाई रूप से मै0 वन्डर सीमेंट लि0 की माईन्स पर मै0 वीडीएच इको एनर्जी एंटरप्राईजेज प्रा.लि0. के यहां कार्य किया गया है। 'कलमवार जवाब' देते हुए जाहिर किया गया है कि प्रार्थी को सर्वप्रथम दिनांक 18.4.2007 के आदेश से 2 माह के लिए अस्थाई रूप से नियोजित किया गया था। समयावधि समाप्त होते ही उसका नियोजन स्वतः समाप्त हो गया। इसके बाद जब भी आवश्यकता हुई प्रार्थी उपलब्ध रहा तथा उसने अस्थाई तौर पर निश्चित समयावधि के लिए आकस्मिक प्रकृति का दैनिक दर से किया है। वह संस्थान में 'नियमित नियोजन' में नहीं रहा है। प्रार्थी ने दिनांक 7.7.2014 तक का भुगतान भी प्रहलाद सिंह ठेकेदार से प्राप्त किया है। वह संस्थान में नियोजित ही नहीं था इसलिए नोटिस देने आदि की आवश्यकता नहीं थी। प्रार्थी अधि0 1947 की धारा 25–एफ,जी व एच के प्रावधानों का लाभ प्राप्त करने का अधिकारी नहीं है। क्लेम प्रार्थना पत्र निरस्त करने की प्रार्थना की गई।

प्रार्थी की ओर से साक्ष्य में एड 1 हेमराज, ए ड 2 शंभूलाल के शपथपत्र पर बयान दर्ज करवाये गये ।

विपक्षी की ओर से साक्ष्य में एन ए ड 1 रघुनन्दन दाधीच के शपथपत्र पर बयान दर्ज करवाये गये ।

हमनें दोनों पक्षों को सुना एवं संपूर्ण पत्रावली का अध्ययन किया। दोनों पक्षों की ओर से लिखित बहस भी पेश की गई।

बहस के दौरान अधिवक्ता प्रार्थी ने प्रार्थना पत्र में उल्लेखित तथ्यों को दोहराते हुए वाछित अनुतोष प्रदान किये जाने का निवेदन कियज्ञं इसके विपरीत विपक्षी के विद्वान अधिवक्ता ने भी बहस के दौरान उनके अभिवचनों में उल्लेखित तथ्यों को दोहराते हुए क्लेम प्रार्थनापत्र खारिज करने की प्रार्थना की।

प्रार्थी ने अपना नियोजन विपक्षी के यहां दिनांक 18.4.2007 से अस्थाई श्रमिक के रूप में हैवी इक्विपमेंट ऑपरेटर के रूप में होना बताया है। विपक्षी ने भी अपने जवाब की 'कलमवार जवाब' की मद सं0 एक में इस तथ्य को स्वीकार करते हुए कहा है कि प्रार्थी को मात्र दो माह की समयावधि के लिए ही पूर्णतया अस्थाई तौर पर नियोजित किया गया था। इस तथ्य को स्वयं प्रार्थी ए ड 1 हेमराज ने अपनी जिरह में भी स्वीकार किया है तथा यह कहा है कि यह सही है कि प्रदर्श 1 में अस्थाई रूप से कार्यरत होने का उल्लेख है। प्रदर्श 1 का अवलोकन किया गया, जिसमें भी प्रार्थी का अस्थाई रूप से व आवश्यकता होने पर कार्य करने का उल्लेख किया गया है। प्रदर्श 2 भी प्रार्थी द्वारा ही प्रस्तुत दस्तावेज है, जो विपक्षी संस्थान द्वारा जारी किया हुआ है, जिसमें प्रार्थी द्वारा अस्थाई रूप से दिनांक 19.4.2007 से 18.8.2007, 18.5.2008 से 17.6.2008 व 7.2.2011 से 6.8.2011 तक (11 माह) अस्थाई रूप से कार्य करने का उल्लेख है। इस सबंध में प्रार्थी से की गई जिरह के दौरान प्रार्थी ने विपक्षी के इस सुझाव को गलत बताया कि प्रदर्श 2 में उल्लेखित समयावधि के अलावा उसने काम नहीं किया हो। आगे जिरह के दौरान प्रार्थी कहता है कि यह सही है कि इस बाबत मैंने कहीं शिकायत नहीं की कि प्रदर्श 2 गलत दिया गया है। जिरह में प्रार्थी यह भी स्वीकार करता है कि प्रदर्श 3 से प्रदर्श 6 अस्थाई नियुक्ति पत्र है, लेकिन जिरह में आगे वह यह कहता है कि यह गलत है कि प्रदर्श 3 से प्रदर्श 6 में मुझे अस्थाई नियुक्ति दी हो। गवाह जिरह में यह भी स्पष्ट रूप से स्वीकार करता है कि बीच–बीच में गेप है, लेकिन वह काम निरंतर करना कहता है। प्रार्थी यह भी कहता है कि प्रदर्श 3 से प्रदर्श 7 के बारे में शिकायत नहीं की कि गेप की समयावधि का नियुक्तिपत्र नहीं दिया जा रहा है तथा वह यह स्पष्ट रूप से स्वीकार करता है कि प्रदर्श 3 से 7 में हमारा नियोजन समयावधि विशेष के लिए किया गया था। प्रदर्श 3 से प्रदर्श 7 नियुक्तिपत्रों का अवलोकन किया गया, जिनमें नियुक्ति पूर्णतया अस्थाई होने व अवधि पूर्ण होते ही नियोजन स्वतः समाप्त होने का उल्लेख है, जिस पर प्रार्थी के नियुक्ति शर्तें स्वीकार करने के संबंध में हस्ताक्षर भी मौजूद हैं और इस तथ्य को भी प्रार्थी हेमराज अपनी जिरह में भी स्पष्ट रूप से स्वीकार करता है। ये सभी दस्तावेजात प्रार्थी

द्वारा ही प्रस्तुत किये गये हैं और प्रार्थी ने अपनी जिरह में भी यह स्पष्ट रूप से स्वीकार किया है कि उसका नियोजन समय विशेष के लिए ही किया गया था । हालांकि जिरह में यह गवाह काम निरंतर करना कहता है, लेकिन यह गवाह अपनी नियुक्ति नियुक्तिपत्र में अंकित समयावधि के लिए होने के तथ्य से अपनी जिरह में इनकार नहीं कर रहा है। प्रार्थी का गवाह ए ड 2 शंभूलाल भी अपने मुख्य परीक्षण स्वरूप प्रस्तुत शपथपत्र में प्रार्थी द्वारा 18.4.2007 के आदेश पर अस्थाई श्रमिक के रूप में दिनांक 2.7.2014 तक कार्यरत होना कहता है।

इस प्रकार स्वयं प्रार्थी द्वारा प्रस्तुत दस्तावेजात व प्रस्तुत साक्ष्य से ही यह पूरी तरह से साबित है कि प्रार्थी को विपक्षी के द्वारा अस्थाई तौर पर निश्चित समयावधि के लिए आवश्यकतानुसार कार्य हेतु नियोजित किया गया था तथा समयावधि समाप्त होते ही नियुक्तिपत्रों में अंकित शर्तों के अनुसार उसका नियोजन भी स्वतः ही समाप्त हो जाता था। प्रदर्श 2 प्रार्थी द्वारा ही प्रस्तुत दस्तावेज है, जो विपक्षी संस्थान द्वारा दिनांक 24.8.2012 का जारी किया हुआ है, जिसमें प्रार्थी द्वारा अस्थाई रूप से दिनांक 19.4.2007 से 18.8.2007, 18.5.2008 से 17.6.2008 व 7.2.2011 से 6.8. 2011 तक (11 माह) अस्थाई रूप से कार्य करने का उल्लेख है। इसके बाद की अवधि का नियुक्ति पत्र प्रदर्श 7, जो दिनाक 20.9.2013 का जारीशुदा है, जिसे प्रार्थी द्वारा पेश किया गया है, जिसके द्वारा प्रार्थी को दिनांक 21.9.2013 से तीन माह के लिए पूर्णतः अस्थाई तौर पर नियोजित किया गया है। उक्त सभी दस्तावेजात प्रार्थी द्वारा ही पेश किये गये हैं, जिनके अनुसार प्रार्थी द्वारा निरंतर व नियमित रूप से विपक्षी के अधीन कार्य करना प्रकट नहीं होता है तथा कार्यावधि में बीच– बीच में गेप होना स्वयं प्रार्थी भी अपनी जिरह में स्पष्ट रूप से स्वीकार करता है। ऐसी स्थिति में प्रार्थी का नियोजन अधि0 1947 की धारा 25–बी के तहत 'नियमित नियोजन' की तारीफ में आना साबित नहीं माना जा सकता है।

प्रार्थी ने प्रदर्श 8 लगायत प्रदर्श 12 पी.एफ. पर्चियां व रसीदें पेश की है, जो नियुक्तिपत्रों में दर्शाई गई समयावधि की होना प्रतीत हो रहा है। विपक्षी गवाह एन ए ड 1 रघुनंदन दाधीच ने भी अपनी जिरह में यह स्वीकार किया है कि यह सही है कि हमारे यहां कार्यरत श्रमिकों की पी.एफ की राशि की कटौती होती है। इस प्रकार प्रार्थी द्वारा नियोजन की बताई जा रही अवधि में उसकी भविष्य निधि के मद में कटौती होना तो निर्विवादित है, लेकिन कटौती होने मात्र के आधार पर ही उसे विपक्षी का नियमित श्रमिक होना नहीं माना जा सकता है । इसके अतिरिक्त प्रदर्श 13 लगायत प्रदर्श 34 प्रार्थी की पे स्लीपें हैं,जो विपक्षी द्वारा जारी की गई है, लेकिन ऊपर किये गये विवेचन के अनुसार प्रार्थी का नियोजन आकस्मिक प्रकृति का होकर पूर्णतः अस्थाई था, जो निश्चित समयावधि के लिए आवश्यकतानुसार था तथा समयावधि समाप्त होते ही प्रार्थी का नियोजन भी नियुक्तिपत्रों में अंकित शर्तों के अनुसार स्वतः ही समाप्तः हो जाता था। अतः इस संबंध में प्रार्थी की ओर से किये गये तर्क स्वीकार किये जाने योग्य नहीं है।

इस संबंध में विपक्षी की ओर से प्रस्तुत न्यायिक दृष्टांत 2007 एल एल आर 1260 (एस.सी.) गंगाकिसान सहकारी चीनी मिल लि0 बनाम जैवी सिंह अवलोकनीय है, जिसमें मान0 उच्चतम न्यायालय द्वारा यह सिद्धांत प्रतिपादित किया गया है कि नियोजन की प्रकृति को साबित करने का भार स्वयं श्रमिक पर है। प्रार्थी का ऐसा अभिवचन नहीं रहा है कि उसका नियोजन 'नियमित नियोजन' हो, बल्कि उसने स्वयं ने अस्थाई श्रमिक के रूप में नियोजित होने का ही कथन किया है तथा उसका नियोजन पूर्णतः अस्थाई होना स्वयं उसके द्वारा प्रस्तुत नियुक्तिपत्रों व उसके द्वारा क्लेम प्रार्थनापत्र में किये गये अभिवचनो से भी साबित है। अतः उक्त न्यायिक दृष्टांत हस्तगत मामले में पूरी तरह से लागू होता है। उक्त न्यायिक दृष्टांत की रोशनी में भी प्रार्थी का नियोजन अधि0 1947 की धारा 25–बी के तहत 'नियमित नियोजन' होना साबित नहीं माना जा सकता है।

वकील विपक्षी का बहस के दौरान तर्क रहा है कि दिनांक 2.7.2014 को प्रार्थी उनके संस्थान में नियोजित नहीं था। अतः रेफरेन्स में सेवा पृथककरण की बताई गई तिथि 2.7.2014 को उसे सेवा से पृथक करना संभव नहीं था। वकील प्रार्थी ने इस संबंध में न्यायिक दृष्टांतए आई आर 1981 (एस.सी.) पेज 1626 भी पेश किया।

उक्त न्यायिक दृष्टांत का सम्मान पूर्वक अध्ययन किया गया। उक्त न्यायिक दृष्टांत की रोशनी में इस संबंध में विचार करें तो प्रार्थी अपने अभिवचनो व साक्ष्य स्वरूप प्रस्तुत अपने शपथपत्र में दिनांक 2.7.2014 को सेवा पृथक करना कहता है, लेकिन पत्रावली पर प्रदर्श एम 2–ए भुगतान रजिस्टर की प्रति उपलब्ध है, जिसके अवलोकन से जाहिर होता है कि प्रार्थी को जो भुगतान किया गया है वह दिनांक 7.7.2014 तक की अवधि के लिए किया गया है। उक्त प्रदर्श 2–ए पर अपने हस्ताक्षर होना स्वयं प्रार्थी अपनी जिरह में भी स्वीकार करता है तथा यह कहता है कि यह कहना गलत है कि प्रदर्श एम 2 के जरिये मैंने दिनांक 1.7.2014 से 6.7.2014 तक 6 दिन का वेतन प्राप्त किया हो, लेकिन आगे जिरह में यह गवाह स्पष्ट रूप से कहता है कि वेतन कंपनी के स्थाई आदमी ने दिया था। ऐसी स्थिति में प्रार्थी द्वारा दिनांक 6.7.2014 तक का वेतन प्राप्त करना स्वीकृत तथ्य है। अतः ऐसी स्थिति में प्रार्थी द्वारा दिनांक 2.7.2014 को विपक्षी के यहां कार्य करना निर्विवादित है। प्रार्थी की ओर से ऐसी कोई साक्ष्य पेश नहीं की गई है

जिससे उसे विपक्षी द्वारा दिनांक 2.7.2014 को सेवा से पृथक करना साबित होता हो। अतः प्रार्थी को विपक्षी के द्वारा दिनांक 2.7.2014 को सेवा से पृथक करना भी साबित नहीं माना जा सकता है।

इस संबंध में विपक्षी की ओर से प्रस्तुत न्यायिक दृष्टांत ए आई आर 1981 (एस.सी.) पेज 1626 मै0 फायरस्टोन टायर एंड रबर कं0 बनाम दी वर्कमेन भी अवलोकनीय है,जिसमें मान0 उच्चतम न्यायालय द्वारा यह अभिनिर्धारित किया गया है कि रेफरेन्स से परे जाकर न्यायालय द्वारा कोई निष्कर्ष नहीं दिया जा सकता है। उक्त न्यायिक दृष्टांत हस्तगत प्रकरण में पूरी तरह से लागू होता है। उक्त न्यायिक दृष्टांत की रोशनी में भी प्रार्थी को दिनांक 2.7.2014 को सेवा पृथक करना साबित नहीं माने जाने से वह कोई राहत प्राप्त करने का अधिकारी नहीं है।

विपक्षी की ओर से प्रस्तुत न्यायिक दृष्टांत 2000 (1) सी एल आर पेज 901 नरेन्द्र सिंह बनाम रा एंड फिनिशिंग प्रोडक्शन वगैरह में मान0 राज. उच्च न्यायालय द्वारा यह अभिनिर्धारित किया गया है कि मौखिक सेवा मुक्ति को भी समुचित साक्ष्य से साबित किया जाना आवश्यक है। हस्तगत मामले में प्रार्थी इस बारे स्वयं के बयान दर्ज कराये हैं। हालांकि उसकी ओर से ए ड 2 शंभूलाल को भी बतौर गवाह पेश किया है लेकिन उसकी साक्ष्य विश्वसनीय नहीं मानी जा सकती है क्योंकि स्वयं शंभूलाल का भी सेवा पृथककरण का विवाद इस न्यायालय में लम्बित है, जिसमें भी इस प्रकरण के प्रार्थी हेमराज ने गवाह शंभूलाल के पक्ष में साक्ष्य दी है। सेवा पृथककरण बाबत प्रार्थी ने स्वयं की साक्ष्य के अतिरिक्त किसी अन्य स्वतंत्र गवाह को भी अपने समर्थन में पेश नहीं किया गया है। अतः उक्त विवेचन के आधार पर भी प्रार्थी दिनांक 2.7.2014 को अपने सेवा पृथकरण को भी साबित करवाने में असमर्थ रहा है।

उक्त समग्र विवेचन से यह पाया जाता हैं कि प्रार्थी, विपक्षी का अस्थाई श्रमिक था, जिसे निश्चित समयावधि के लिए विपक्षी द्वारा आवश्यकतानुसार नियोजित किया गया था तथा प्रार्थी का नियोजन ऊपर किये गये विवेचन के अनुसार अधि0 1947 की धारा 25–बी के तहत 'नियमित नियोजन' की तारीफ में नहीं आता है। इसके अतिरिक्त प्रार्थी को विपक्षी के द्वारा दिनांक 2.7.2014 को सेवा से पृथक किया जाना भी साबित नहीं माना गया है। अतः वह विपक्षी से कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

अतः भारत सरकार द्वारा प्रेषित विवाद का उत्तर इस प्रकार दिया जाता है–

कर्मकार श्री हेमराज पुत्र श्री लालूराम मेवाडा को कारखाना प्रबंधक, बिरला कॉर्पोरेशन लिमिटेड, बिरला सीमेंट वर्क्स, माधव नगर, चंदेरिया, जिला– चितौडगढ (राज0) द्वारा मौखिक आदेश दिनांक 2.7.2014 के द्वारा नौकरी से नहीं निकाला गया है। प्राथी का नियोजन 'नियमित नियोजन' नहीं था। प्रार्थी किसी राहत का पाने का हकदार नहीं है।

पंचाट की प्रति भारत सरकार को प्रकाशनार्थ भेजी जाये।

सुशील कुमार शर्मा, न्यायाधीश

नई दिल्ली, 27 जून, 2023

का.आ. 1125.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिंदुस्तान जिंक लिमिटेड, रामपुरा-आगुचा माईन्स, भीलवाड़ा के प्रबंधतंत्र के संबद्ध नियोजकों और श्री भंवरलाल मीणा पुत्र श्री रामचंद्र मीणा, भीलवाड़ा के बीच अनुबंध में निर्दिष्ट औद्योगिक अधिकरण एवं श्रम न्यायालय, भीलवाड़ा, पंचाट के (रिफरेन्स न.- 6/2019 एलसीआर) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2023 को प्राप्त हुआ था।

[सं. जेड -16025/04/2023-आईआर(एम)-25]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th June, 2023

S.O. 1125.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 6/2019 LCR) of the Industrial Tribunal cum Labour Court, Bhilwada as shown in the Annexure, in the Industrial dispute between the employers in relation to Hindustan Zinc Limited, Rampura-Aghucha Mines, Bhilwada and Shri Bhanwarlal Meena S/o Shri Ramchandra Meena, Bhilwada which was received along with soft copy of the award by the Central Government on 27.06.2023.

[No. Z-16025/04/2023-IR(M)-25]

D. K. HIMANSHU, Under Secy.

अनुबंध

:: श्रम न्यायालय, भीलवाड़ा

पीठासीन अधिकारीः श्री सुशील कुमार शर्मा,.(जिला न्यायाधीश संवर्ग)

प्रकरण संख्या : 6 /2019 एल. सी. आर

श्री भंवरलाल मीणा पुत्र श्री रामचन्द्र मीणा,ए–11, कृष्णा नगर,हुरडा रोड,गुलाबपुरा, तह0–हुरडा,जिला–भीलवाडा (राज0) .. प्रार्थी

: बनाम :

डाईरेक्टर, हिन्दुस्तान जिंक लि0,रामपुरा–आगुचा माईन्स, जिला–भीलवाडा(राज0)। ..विपक्षी / नियोजक

उपस्थित :

प्रार्थी की ओर से कोई उपस्थित नहीं।
विपक्षी की ओर से कोई उपस्थित नहीं।

:: पंचाट ::

दिनांक 10.2.2023

श्रम एवं रोजगार मंत्रालय, भारत सरकार की अधिसूचना क्रमांकःएफ नं0 ए जे–8 / 2 / 44 / 2019–आई.आर. दिनांक 24.10.2019 के द्वारा निम्न विवाद इस न्यायालय को अधिनिर्णयार्थ प्रेषित किया गया–

> **'Whether the action of the management of Hindusthan Zinc Limited, Rampura Agucha Mines,Rampura, Disst. Bhilwara in giving premature retirement to shri Bhanwarlal Meena S/O Shri Ramchandra Meena, Mechanic at the age of 58 years w.e.f. 30.6.2019 instead of 60 years is legal and justified? If not ,whether the demand of the workman forhis reinstatement up to age of 60 years or payment of wages, allowance and other benefits for 02 years is legal and justified ? If yes, towhat relief the concerned workman is entitled and from which date.**

आज प्रार्थी हाजिर नहीं हैं । प्रार्थी की तामील उसके पते पर रजिस्टर्ड डाक से भेजी जा चुकी है। तामील भेजे एक माह से अधिक की समयावधि भी व्यतीत हो गई है। तामील अदम तामील भी नहीं लौटी है। प्रार्थी आज बावजूद तामील हाजिर नहीं है। अतः ऐसा प्रतीत होता है कि प्रार्थी की इस प्रकरण में कोई रूचि नहीं है तथा अब वह इस प्रकरण में कोई कार्यवाही नहीं चाहता है। अतः 'कोई विवाद नहीं रहा' आशय का पंचाट जारी किया जाता है।

पंचाट की प्रति केन्द्र सरकार को प्रकाशनार्थ भेजी जाये।

सुशील कुमार शर्मा, न्यायाधीश

नई दिल्ली, 27 जून, 2023

का.आ. 1126.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आर. बी.माइनिंग एंड कंपनी, भीलवाड़ा के प्रबंधतंत्र के संबद्ध नियोजकों और खान मज़दूर कांग्रेस, भीलवाड़ा के बीच अनुबंध में निर्दिष्ट औद्योगिक अधिकरण एवं श्रम न्यायालय, भीलवाड़ा, के पंचाट (रिफरेन्स न.- 1/2021 एलसीआर) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.04.2023 को प्राप्त हुआ था।

[सं. एल-42011/130/2020-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th June, 2023

S.O. 1126.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 1/2021 LCR) of the Industrial Tribunal cum Labour Court, Bhilwada as shown in the Annexure, in the Industrial dispute between the employers in relation to R.B. Mining and Company, Bhilwada and Khan Mazdoor Congress, Bhilwada which was received along with soft copy of the award by the Central Government on 27.06.2023.

[No. L-42011/130/2020-IR(DU)]

D. K. HIMANSHU, Under Secy.

अनुबंध

:: श्रम न्यायालय, भीलवाड़ा

पीठासीन अधिकारीः **श्री सुशील कुमार शर्मा**,.(जिला न्यायाधीश संवर्ग)

प्रकरण संख्या : 1 /2021 एल.सी.आर

संयुक्त सचिव, खान मजदूर कांग्रेस,
गांधी मजदूर सेवालय, भीलवाडा (राज0) .. प्रार्थी/यूनियन

: **बनाम** :

मैनेजर, आर. बी. माईनिंग एंड कंपनी,
ओमकापुरा, पो0–गहुंली,
तह0–कोटडी, जिला–भीलवाडा(राज0)। .. विपक्षी/नियोजक

उपस्थित :

प्रार्थी की ओर से कोई उपस्थित नहीं।
विपक्षी की ओर से कोई उपस्थित नहीं।

:: पंचाट ::

दिनांक 27.1.2023

श्रम एवं रोजगार मंत्रालय,भारत सरकार की अधिसूचना क्रमांकःएफ नं0 एल–42011/130/2020–आई.आर.(डीयू) दिनांक 16.12.2020 के द्वारा निम्न विवाद इस न्यायालय को अधिनिर्णयार्थ प्रेषित किया गया–

> **'Whether the action of the management of M/S R.B.Mining & Company as regards termination 0f shri Nola S/O Sh Rajulal Gurjar W.r.f. 16.05.2020 as raised by Khan Majdoor Congress, Bhilwara vide letter dated 19-7-2020 is proper , legal and justified? If not, then to what relif the concerned worker is entitled ? What direction, if any, is necessary in the matter?'.**

विवाद प्राप्त होने पर पक्षकारों को नोटिस जारी कर तलब किया गया।

आज प्रार्थी हाजिर नहीं हैं । प्रार्थी की तामील श्रमिक संघ के प्रतिनिधि को हो चुकी है। प्रार्थी या उसके प्रतिनिधि आज बावजूद तामील हाजिर नहीं है। अतः ऐसा प्रतीत होता है कि प्रार्थी की इस प्रकरण में कोई रूचि नहीं है तथा अब वह इस प्रकरण में कोई कार्यवाही नहीं चाहता है। अतः 'कोई विवाद नहीं रहा' आशय का पंचाट जारी किया जाता है।

पंचाट की प्रति केन्द्र सरकार को प्रकाशनार्थ भेजी जाये।

सुशील कुमार शर्मा, न्यायाधीश

नई दिल्ली, 27 जून, 2023

का.आ. 1127.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आर. बी.माइनिंग एंड कंपनी, भीलवाड़ा के प्रबंधतंत्र के संबद्ध नियोजकों और खान मज़दूर कांग्रेस, भीलवाड़ा के बीच अनुबंध में निर्दिष्ट औद्योगिक अधिकरण एवं श्रम न्यायालय, भीलवाड़ा, पंचाट के (रिफरेन्स न.- 2/2021 एलसीआर) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2023 को प्राप्त हुआ था।

[सं. एल-29011/10/2020-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th June, 2023

S.O. 1127.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 2/2021 LCR) of the Industrial Tribunal cum Labour Court, Bhilwada as shown in the Annexure, in the Industrial dispute between the employers in relation to R.B. Mining and Company, Bhilwada and Khan Mazdoor Congress, Bhilwada which was received along with soft copy of the award by the Central Government on 27.06.2023.

[No. L-29011/10/2020-IR(M)]

D. K. HIMANSHU, Under Secy.

अनुबंध

:: श्रम न्यायालय, भीलवाड़ा

पीठासीन अधिकारीः **श्री सुशील कुमार शर्मा,**.(जिला न्यायाधीश संवर्ग)

प्रकरण संख्या : 2/2021 एल. सी. आर

संयुक्त सचिव, खान मजदूर कांग्रेस
गांधी मजदूर सेवालय, भीलवाडा (राज0) .. प्रार्थी/यूनियन

: बनाम :

मैनेजर,आर.बी.माईनिंग एंड कंपनी,ओमकापुरा,पो0—गहुंली,
तह0—कोटडी,जिला—भीलवाडा(राज0)। .. विपक्षी/नियोजक

उपस्थित :

प्रार्थी की ओर से कोई उपस्थित नहीं।
विपक्षी की ओर से कोई उपस्थित नहीं।

:: पंचाट ::

दिनांक 27.1.2023

श्रम एवं रोजगार मंत्रालय,भारत सरकार की अधिसूचना क्रमांकःएफ नं0 एल—29011/10/2020—आई.आर. (एम) दिनांक 23.12.2020 के द्वारा निम्न विवाद इस न्यायालय को अधिनिर्णयार्थ प्रेषित किया गया—

> **'Whether of the action of the management of M/S R.B.Mining& Company in terminatingt The Service of shri Shaitan S/O Shri MangilalGurjar W.r.f. 16.05.2020 is legal and justified? If no, then to what relif the concerned workers are entitled ato and from which date.**

विवाद प्राप्त होने पर पक्षकारों को नोटिस जारी कर तलब किया गया।

आज प्रार्थी हाजिर नहीं हैं । प्रार्थी की तामील श्रमिक संघ के प्रतिनिधि को हो चुकी है। प्रार्थी या उसके प्रतिनिधि आज बावजूद तामील हाजिर नहीं है। अतः ऐसा प्रतीत होता है कि प्रार्थी की इस प्रकरण में कोई रूचि नहीं

है तथा अब वह इस प्रकरण में कोई कार्यवाही नहीं चाहता है। अतः 'कोई विवाद नहीं रहा' आशय का पंचाट जारी किया जाता है।

पंचाट की प्रति केन्द्र सरकार को प्रकाशनार्थ भेजी जाये।

सुशील कुमार शर्मा, न्यायाधीश

नई दिल्ली, 27 जून, 2023

का.आ. 1128.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स स्टील ऑफ़ इंडिया लिमिटेड-आईएसपी, बर्नपुर के प्रबंधतंत्र के संबद्ध नियोजकों और आसनसोल-बर्नपुर-कुल्टी मेटल एंड इंजीनियरिंग वर्कर्स' यूनियन के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, आसनसोल के पंचाट (रिफरेन्स न. -44/2018) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2023 को प्राप्त हुआ था।

[सं. एल-26011/10/2018-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th June, 2023

S.O. 1128.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 44/2018) of the Central Government Industrial Tribunal cum Labour Court, Asansol as shown in the Annexure, in the Industrial dispute between the employers in relation to IM/s Steel Authority of India Limited-ISP, Burnpur and Asansol-Burnpur-Kulti Metal and Engineering Workers' Union which was received along with soft copy of the award by the Central Government on 27.06.2023.

[No. L-26011/10/2018-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

Present: Shri ANANDA KUMAR MUKHERJEE, Presiding Officer, C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 44 OF 2018

PARTIES: Asansol-Burnpur-Kulti Metal and Engineering Workers' Union.

Vs.

Management of M/s. SAIL-ISP, Burnpur.

REPRESENTATIVES:

For the Union/Workmen: None.
For the Management: Mr. Debashis Mondal, learned advocate.

INDUSTRY: Iron and Steel.
STATE: West Bengal.
Dated: 27.04.2023

AWARD

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour, vide its Order **No. L-26011/10/2018-IR(M)** dated 30.11.2018 has been pleased to refer the following dispute between the employer, that is the Management of M/s. SAIL-ISP, Burnpur and their workmen for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the Management of M/s. ISP-SAIL, Burnpur in withdrawing the subsidized canteen facilities in respect of labour engaged through contractors with reference to settlement dated 05.09.1983 and 09.09.2009 without paying canteen allowance (in lieu of subsidized canteen) to the contractor labour is just and legal? If not, to what relief they are entitled to? "

1. On receiving Order **No. L-26011/10/2018-IR(M)** dated 30.11.2018 from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 44 of 2018** was registered on 31.12.2018 and an order was passed issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses. Both parties appeared before the Tribunal through their authorized representatives.

2. This case was fixed up on 21.04.2023 for appearance of parties and hearing. Mr. Debashis Mondal, learned advocate appeared on behalf of General Manager (Pers.-CLC & HRIS), SAIL-ISP, Burnpur. On repeated calls at 01:55 PM, none appeared for the General Secretary, Asansol-Burnpur-Kulti Metal & Engineering Workers' Union. On a perusal of record, I find that fresh Notice under registered post was issued to the union representative, directing him for his appearance. In this case, Mr. Subhasis Basu, the General Secretary of ABK Metal & Engineering Workers' Union has filed written statement long back on 13.02.2019 through Mr. Prasanta Ghosh, learned advocate. But none has appeared.

3. It appears to me that ample opportunities have been given to the union representative to be present before the Tribunal for submission of their case. Since no step has been taken, I am of the view that the union is not inclined to proceed further with this case. Accordingly, the case is disposed of in form of **a No dispute Award**.

Hence,

ORDERED

that **a No Dispute Award** be drawn up in respect of the above Reference. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 27 जून, 2023

का.आ. 1129.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इन्द्रप्रस्थ गैस लिमिटेड; अंतल्या इंटरप्राइजेज के प्रबंधतंत्र के संबद्ध नियोजकों और श्री रबिन्द्र प्रताप सिंह पुत्र श्री शिवनाथ सिंह, दिल्ली के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (रिफरेन्स न. -297/2021) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2023 को प्राप्त हुआ था।

[सं. जेड-16025/04/2023-आईआर(एम)-43]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th June, 2023

S.O. 1129.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 297/2021) of the Central Government Industrial Tribunal cum Labour Court-2, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to Indraprastha Gas Ltd; Antalya Enterprises and Shri Rabendra Pratap Singh S/o Shri Shivnath singh, Delhi which was received along with soft copy of the award by the Central Government on 27.06.2023.

[No. Z-16025/04/2023-IR(M)-43)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 297/2021

Date of Passing Award- 16th May, 2023

Between:

Sh. Rabendra Pratap Singh, S/o Sh. Shivnath Sigh,
R/o house no. B-143. 4th Floor, Village Ghazipur,
Gali No. 03, Delhi-110096. …Workman

Versus

1. Indraprastha Gas Ltd.
IGL Bhawan, Plot No. 4, Community Centre,
R.K Puram, K. D Colony, Sector-09 , New Delhi-110022.

2. Antalya Enterprises,
Through- Col. Shiraj Verma (proprietor)
House No. 1128, Sector-37, Noida, U.P-201301. …Managements

Appearances:-

Claimant in person.
Sh. K.K Pandey, Ld. A/R for the management no. 1 IGL.
Sh. Raja Dutta(Manager) for the mgt no. 2 i.e Antalya Enterprises

AWARD

The claimant had filed an application invoking the provision of section 2 A of the ID. Act alleging illegal termination of the service by the mgt no. 1 describing him as a principle employer.

In the claim statement as prayer was made for reinstatement in service with full back wages and other consequential benefits. Being noticed the mgt of IGL appeared and filed written statement denying the employer and employee relationship of the claimant and the mgt no. 1. It has been stated that the claimant was a contractual employee employed by the contractor i.e the mgt no. 2. Hence, they prayed for dismissal of the claim petition filed against them. The mgt no. 2 was proceeded ex-parte. When the matter was posted for framing of issue, the mgt no. 2 appeared and the parties are agreed to the proposal for conciliation and an amicable settlement. After persuasion the parties agreed for conciliation and the claimant gave a statement to the effect that pursuant to the settlement the mgt no. 2 Antalya Enterprises has reinstated him into service. Hence, he has no claim against any of the managements of this proceeding.

In view of the same the present no dispute /no claim award is being passed. Hence ordered.

ORDER

The claim be and the same is disposed of as the claimant has no claim against the managements

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 27 जून, 2023

का.आ. 1130.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इन्द्रप्रस्थ गैस लिमिटेड; अंतल्या इंटरप्राइजेज के प्रबंधतंत्र के संबद्ध नियोजकों और श्री प्रवेश कुमार पुत्र श्री रविंद्र सिंह तंवर, बाघपत के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (रिफरेन्स न. -298/2021) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2023 को प्राप्त हुआ था।

[सं. जेड-16025/04/2023-आईआर(एम)-44]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th June, 2023

S.O. 1130.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 298/2021) of the Central Government Industrial Tribunal cum Labour Court-2, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to Indraprastha Gas Ltd; Antalya Enterprises and Shri Pravesh Kumar S/o Shri Ravinder Singh Tanvar, Baghpat which was received along with soft copy of the award by the Central Government on 27.06.2023.

[No. Z-16025/04/2023-IR(M)-44]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 298/2021

Date of Passing Award- 16th May, 2023

Between:

Sh. Pravesh Kumar, S/o Sh. Ravinder Singh Tanvar,
R/o Village-Sunehera, Post Khera, District Baghpat, …Workman

Versus

1. Indraprastha Gas Ltd.
   IGL Bhawan, Plot No. 4, Community Centre,
   R.K Puram, K. D Colony, Sector-09 , New Delhi-110022.

2. Antalya Enterprises,
   Through- Col. Shiraj Verma (proprietor)
   House No. 1128, Sector-37, Noida, U.P-201301 ….. Managements

Appearances:-

Claimant in person.
Sh. K.K Pandey, Ld. A/R for the management no. 1 IGL.
Sh. Raja Dutta(Manager) for the mgt no. 2 i.e Antalya Enterprises

AWARD

The claimant had filed an application invoking the provision of section 2 A of the ID. Act alleging illegal termination of the service by the mgt no. 1 describing him as a principle employer.

In the claim statement as prayer was made for reinstatement in service with full back wages and other consequential benefits. Being noticed the mgt of IGL appeared and filed written statement denying the employer and employee relationship of the claimant and the mgt no. 1. It has been stated that the claimant was a contractual employee employed by the contractor i.e the mgt no. 2. Hence, they prayed for dismissal of the claim petition filed against them. The mgt no. 2 was proceeded ex-parte. When the matter was posted for framing of issue, the mgt no. 2 appeared and the parties are agreed to the proposal for conciliation and an amicable settlement. After persuasion the parties agreed for conciliation and the claimant gave a statement to the effect that pursuant to the settlement the mgt no. 2 Antalya Enterprises has reinstated him into service. Hence, he has no claim against any of the managements of this proceeding.

In view of the same the present no dispute /no claim award is being passed. Hence ordered.

ORDER

The claim be and the same is disposed of as the claimant has no claim against the managements

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 27 जून, 2023

का.आ. 1131.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इन्द्रप्रस्थ गैस लिमिटेड; अंतल्या इंटरप्राइजेज के प्रबंधतंत्र के संबद्ध नियोजकों और श्री सुनील चौधरी पुत्र श्री बिल्टू चौधरी, दिल्ली के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (रिफरेन्स न. -299/2021) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2023 को प्राप्त हुआ था।

[सं. जेड-16025/04/2023-आईआर(एम)-45]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th June, 2023

S.O. 1131.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 299/2021) of the Central Government Industrial Tribunal cum Labour Court-2, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to Indraprastha Gas Ltd; Antalya Enterprises and Shri Sunil Chaudhary S/o Shri Biltu Chaudhary, Delhi which was received along with soft copy of the award by the Central Government on 27.06.2023.

[No. Z-16025/04/2023-IR(M)-45]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 299/2021

Date of Passing Award- 16th May,2023

Between:

Sh. Sunil Chaudhary, S/o Sh. Biltu Chaudhary,
R/o House No. 3, Pusta Road, Near Shiv Ji Mandi,
Bhajan Pura, Delhi-110023. …Workman

Versus

1. Indraprastha Gas Ltd.
   IGL Bhawan, Plot No. 4, Community Centre,
   R.K Puram, K. D Colony, Sector-09 , New Delhi-110022.

2. Antalya Enterprises,
   Through- Col. Shiraj Verma (proprietor)
   House No. 1128, Sector-37, Noida, U.P-201301. ….Managements

Appearances:-

Claimant in person.
Sh. K.K Pandey, Ld. A/R for the management No. 1 IGL.
Sh. Raja Dutta (Manager) for the mgt no. 2 i.e Antalya Enterprises

AWARD

The claimant had filed an application invoking the provision of section 2 A of the ID. Act alleging illegal termination of the service by the mgt no. 1 describing him as a principle employer.

In the claim statement as prayer was made for reinstatement in service with full back wages and other consequential benefits. Being noticed the mgt of IGL appeared and filed written statement denying the employer and employee relationship of the claimant and the mgt No. 1. It has been stated that the claimant was a contractual employee employed by the contractor i.e the mgt No. 2. Hence, they prayed for dismissal of the claim petition filed against them. The mgt no. 2 was proceeded ex-parte. When the matter was posted for framing of issue, the mgt no. 2 appeared and the parties are agreed to the proposal for conciliation and an amicable settlement. After persuasion the parties agreed for conciliation and the claimant gave a statement to the effect that pursuant to the settlement the mgt

No. 2 Antalya Enterprises has reinstated him into service. Hence, he has no claim against any of the managements of this proceeding.

In view of the same the present no dispute /no claim award is being passed. Hence ordered.

ORDER

The claim be and the same is disposed of as the claimant has no claim against the managements

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 27 जून, 2023

का.आ. 1132.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टील अथॉरिटी ऑफ़ इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और श्री राज कुमार सिंह के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (रिफरेन्स न. -31/2017) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2023 को प्राप्त हुआ था।

[सं. जेड-16025/04/2023-आईआर(एम) -48]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th June, 2023

S.O. 1132.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 31/2017) of the Central Government Industrial Tribunal cum Labour Court-1, Dhanbad as shown in the Annexure, in the Industrial dispute between the employers in relation to Steel Authority of India Limited and Shri Raj Kumar Singh which was received along with soft copy of the award by the Central Government on 27.06.2023.

[No. Z-16025/04/2023-IR(M)-48]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S (2A) (1)(2)of I.D. Amendment Act. 1947.

I.D No. 31/2017

Raj Kumar Singh
Vill- Parashbaniya
P.O- Khas Jeenagora
Dist Dhanbad ….Applicant

Vs

The General Manager
SAIL (Colliery Division)
Chasnalla Colliery
P.O- Chasnalla
Distt- Dhanbad …...Opp.Party

Present :-Dr. S.K.THAKUR, Presiding Officer

Appearances:

For the Applicant :- Shri Raj Kumar Singh (In person)
For the Opp.Party :- Shri D.K.Verma, Advocate

State : Jharkhand. Industry-Coal

Dated- 28/4/ 2023

AWARD

One I.D Application of Sri Raj Kumar Singh Vs General Manager (Colliery Division of M/S SAIL is received U/S 2A (1)(2) of I.D Amendment Act 1947 and registered as I.D case No. 31 of 2017 as following dispute for adjudication in this Tribunal;

SCHEDULE

"Whether the action of the management of M/S SAIL. in Terminating/ dismissing the service of Sri Raj Kumar Singh w.e.f 08.08.2017 is legal and justified? If not, to What relief the concerned workmen is entitled to?"

2. The I.D case is received on 10.10.2017. After receipt of I.D, both Parties are noticed. After notice the Opp.Party appears and files letter of authority, and subsequently workman left appearing before this Tribunal. Thereafter he did not take any step in this case. Case is pending since 10/10/2017. Management is also not appearing before the Tribunal.

3. Sri Raj kumar Singh, the Concerned workman appeared on 27.02.2023 and prayed for withdrawal of the case registered as I.D case No. 31/17 by this Tribunal. He also referred to written petition filed dated 27.02.2023 for withdrawal of the case on personal ground.

4. Sri D.K. Verma Ld Advocate on behalf of the Opp. Party is present and submitted that the Opp. Party has no objection as per the representation of the workman both in writing and before this Tribunal.

5. Considering submission from both side the application under referred I.D registered as I.D case No.31/2017 is allowed to be withdrawn and No claim award is passed. Communicate.

Let copy of this award be sent to the Appropriate Government as required under section 17 of the I.D Act for publication.

Dr. S.K. THAKUR, Presiding Officer

नई दिल्ली, 27 जून, 2023

का.आ. 1133.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टील अथॉरिटी ऑफ़ इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और श्री सुकुमार सिंह के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद पंचाट (रिफरेन्स न. -30/2017) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2023 को प्राप्त हुआ था।

[सं. जेड-16025/04/2023-आईआर(एम)-47]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th June, 2023

S.O. 1133.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 30/2017) of the Central Government Industrial Tribunal cum Labour Court-1, Dhanbad as shown in the Annexure, in the Industrial dispute between the employers in relation to Steel Authority of India Limited and Shri Sukumar Singh which was received along with soft copy of the award by the Central Government on 27.06.2023.

[No. Z-16025/04/2023-IR(M)-47]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, DHANBAD

In the matter of reference U/S (2A) (1)(2)of I.D. Amendment Act. 1947.

I. D No. 30/2017

Sukumar Singh
Vill- Parashbaniya
P.O- Khas Jeenagora
Distt Dhanbad ….Applicant

Vs

The General Manager
SAIL (Colliery Division)
Chasnalla Colliery
P.O- Chasnalla
Distt- Dhanbad ….Opp. Party

Present :-Dr. S.K.THAKUR, Presiding Officer

Appearances:

For the Applicant :- Shri Sukumar Singh (In person)
For the Opp.Party :- Shri D.K.Verma, Advocate

State : Jharkhand. Industry-Coal

Dated- 27/4/ 2023

AWARD

One I.D Application of Sri Sukumar Singh Vs General Manager (Colliery Division of M/S SAIL is received U/S 2A (1)(2) of I.D Amendment Act 1947 and registered as I.D case No. 30 of 2017 as following dispute for adjudication in this Tribunal;

SCHEDULE

"Whether the action of the management of M/S SAIL. in Terminating/ dismissing the service of Sri Sukumar Singh w.e.f 08.08.2017 is legal and justified? If not, to What relief the concerned workmen is entitled to?"

2. The I.D case is received on 09.10.2017. After receipt of I.D, both Parties are noticed. After notice the Opp.Party appears and files letter of authority, and subsequently workman left appearing before this Tribunal. Thereafter he did not take any step in this case. Case is pending since 09/10/2017. Management is also not appearing before the Tribunal.

3. Sri Sukumar Singh , the Concerned workman appeared on 27.02.2023 and prayed for withdrawal of the case registered as I.D case No. 30/17 by this Tribunal. He also referred to written petition filed dated 27.02.2023 for withdrawal of the case on personal ground.

4. Sri D.K. Verma Ld Advocate on behalf of the Opp. Party is present and submitted that the Opp. Party has no objection as per the representation of the workman both in writing and before this Tribunal.

5. Considering submission from both side the application under referred I.D registered as I.D case No.30/2017 is allowed to be withdrawn and No claim award is passed. Communicate.

Let copy of this award be sent to the Appropriate Government as required under section 17 of the I.D Act for publication.

Dr. S.K. THAKUR, Presiding Officer

नई दिल्ली, 27 जून, 2023

का.आ. 1134.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टील अथॉरिटी ऑफ़ इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और श्री अशोक कुमार सिंह के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद पंचाट (रिफरेन्स न. -32/2017) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2023 को प्राप्त हुआ था।

[सं. जेड-16025/04/2023-आईआर(एम)-49]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th June, 2023

S.O. 1134.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 32/2017) of the Central Government Industrial Tribunal cum Labour Court-1, Dhanbad as shown in the Annexure, in the Industrial dispute between the employers in relation to Steel Authority of India Limited and Shri Ashok Kumar Singh which was received along with soft copy of the award by the Central Government on 27.06.2023.

[No. Z-16025/04/2023-IR(M)-49]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, DHANBAD

In the matter of reference U/S (2A) (1)(2)of I.D. Amendment Act. 1947.

I. D No. 32/2017

Ashok Kumar Singh
Vill- Parashbaniya
P.O- Khas Jeenagora
Dist Dhanbad .....Applicant

Vs

The General Manager
SAIL (Colliery Division)
Chasnalla Colliery
P.O- Chasnalla
Distt- Dhanbad ....Opp. Party

Present :-Dr. S.K. THAKUR, Presiding Officer

Appearances:

For the Applicant :- Shri Ashok Kumar Singh (In person)
For the Opp.Party :- Shri D.K. Verma, Advocate

State : Jharkhand. Industry-Coal

Dated- 28/4/ 2023

AWARD

One I. D Application of Sri Ashok Kumar Singh Vs General Manager (Colliery Division of M/S SAIL is received U/S 2A (1)(2) of I.D Amendment Act 1947 and registered as I.D case No. 32 of 2017 as following dispute for adjudication in this Tribunal;

SCHEDULE

"Whether the action of the management of M/S SAIL. in Terminating/ dismissing the service of Sri Ashok Kumar Singh w.e.f 08.08.2017 is legal and justified? If not, to What relief the concerned workmen is entitled to?"

2. The I.D case is received on 10.10.2017. After receipt of I.D, both Parties are noticed. After notice the Opp.Party appears and files letter of authority, and subsequently workman left appearing before this Tribunal. Thereafter he did not take any step in this case. Case is pending since 10/10/2017. Management is also not appearing before the Tribunal.

3. Sri Ashok Kumar Singh, the Concerned workman appeared on 27.02.2023 and prayed for withdrawal of the case registered as I.D case No. 32/17 by this Tribunal. He also referred to written petition filed dated 27.02.2023 for withdrawal of the case on personal ground.

4. Sri D.K.Verma Ld Advocate on behalf of the Opp. Party is present and submitted that the Opp. Party has no objection as per the representation of the workman both in writing and before this Tribunal.

5. Considering submission from both side the application under referred I.D registered as I.D case No.32/2017 is allowed to be withdrawn and No claim award is passed. Communicate.

Let copy of this award be sent to the Appropriate Government as required under section 17 of the I.D Act for publication.

Dr. S.K. THAKUR, Presiding Officer

नई दिल्ली, 27 जून, 2023

का.आ. 1135.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रबंध निदेशक और सीईओ, नोकिया सॉल्यूशंस एंड नेटवर्क्स इंडिया प्राइवेट लिमिटेड, बिड़ला सेंचुरियन, वर्ली, मुंबई; प्रबंध निदेशक एवं सीईओ, वोडाफोन आइडिया लिमिटेड, डीएलएफ साइबर ग्रीन्स, सेक्टर-24, गुरुग्राम, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री आशुतोष श्रीवास्तव, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ पंचाट (संदर्भ संख्या 11/2021) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12/06/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-132 -आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th June, 2023

S.O. 1135.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2021) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director & CEO, Nokia Solutions and Networks India Private Limited. Birla Centurian, Worli, Mumbai ; The Managing Director & CEO, Vodafone Idea Limited. DLF Cyber Greens, Sector-24, Gurugram, and Shri Ashutosh Srivastava, Worker, which was received along with soft copy of the award by the Central Government on 12/06/2023.

[No. L-42025-07-2023-132-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT: Justice ANIL KUMAR**,** Presiding Officer

I.D. No. 11/2021

Ref. No. K-10/1-10/2020-IR dated 18.01.2021

BETWEEN

Sri Ashutosh Srivastava, H. No, 2563,
Nirala Nagar, Sultanpur (UP)

AND

1. The Managing Director & CEO, Nokia Solutions and Networks India Private Limited.
   Birla Centurian, 10th Floor, Plot No. 794,B Wing,
   Pandurang Budhkar Marg, Worli, Mumbai-400030.
2. The Managing Director & CEO, Vodafone Idea Limited. DLF Cyber Greens,
   Tower A, 6th Floor, DLF Cyber City, DLF Phase II, Sector-24, Gurugram-122002.

AWARD

By order No. K-10/1-10/2020-IR dated 18.01.2021 the present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

> **"Whether Shri Ashutosh Srivastava, Bss Cluster Lead can be treated as workman ? If so, whether the alleged termination of his services by the management of Nokia Solutions and Networks India Pvt. Ltd./ Vodafone Idea Limited is legal & justified? If not, to what relief the concerned workman is entitled to and from which date? "**

Accordingly, an industrial dispute No. 11/2021 has been registered on 28.01.2021.

From the perusal of record, the position which emerge out is that till date the claimant/workman has not filed any statement of claim.

Moreover, as a matter of fact and record, neither workman nor its authorized representative has turned up before this Tribunal nor has filed any statement of claim.

Findings & Conclusion:

Taking into consideration the fact that till date no statement of claim has been filed by the claimant in order to establish his claim as per the reference dated 18.01.2021.

So in view of the said facts, as well as the law laid by the Hon'ble High Court in the case of ***V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194*** as under:

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."*

In the case of ***M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164*** Hon'ble Allahabad High Court has held as under:

> *"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

And by the Hon'ble Allahabad High Court in the case of ***District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519****;* wherein it has been held as under:

> *"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."*
>
> As the workman has not filed any statement of claim/oral/documentary evidence, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 27 जून, 2023

का.आ. 1136.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रबंध निदेशक, इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड, मनकापुर, गोंडा; निदेशक, इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड, मनकापुर, गोंडा; महाप्रबंधक उत्पादन, इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड मनकापुर, गोंडा; अपर महाप्रबंधक, (व्यक्तिगत एवं प्रशासन) इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड, मनकापुर, गोंडा, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री चंद्रिका प्रसाद, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 08/2013) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12/06/2023 को प्राप्त हुआ था।

[सं. एल-42025/07/2023/130-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th June, 2023

S.O. 1136.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 08/2013) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director, Indian Telephone Industries Ltd., Mankapur, Gonda ; The Director, Indian Telephone Industries Ltd.,Mankapur, Gonda; The General Manager Production, Indian Telephone Industries Ltd. Mankapur, Gonda; Additional General Manager, (Personal & Administration) Indian Telephone Industries Ltd., Mankapur, Gonda, and Shri Chandrika Prasad, Worker, which was received along with soft copy of the award by the Central Government on 12/06/2023.

[No. L-42025/07/2023/130-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

I.D. No. 08/2013

Chandrika Prasad aged about 47 years S/o late Jagat
R/o Village- Dasupatti, Post Office- Nizamabad,
District- Azamgargh, (Casual Labour No. 723) …..Workman

Versus

1. Indian Telephone Industries Ltd., Mankapur, District Gonda, through its Managing Director.
2. The Director, Indian Telephone Industries Ltd., Mankapur District-Gonda.
3. General Manager Production, Indian Telephone Industries Ltd. Mankapur, District-Gonda
4. Additional General Manager, (Personal & Administration)
   Indian Telephone Industries Ltd.,
   Mankapur, District-Gonda. … Respondent

Facts of the case.

Facts in brief as pleaded by appellant in his clam petition are under that on 17.12.1987 he was appointed on the post of Apprentice Electrician on the stipped Rs. 300/- per months in the C.M.B-M.P. department of Indian Telephone Industries Ltd. Mankapur District Gonda (hereinafter referred as I.T.I.).

By an order dated 11.02.1991 his service was retrenchment/terminated.

Aggrieved by order dated 11.02.1991 by which his services were terminated. He along with other co-worker filed writ petition No. 4191(S/S) of 1991 B.L. Shukla & Others Versus I.T.I. Mankapur District Gonda, which was dismissed by an order dated 27.10.2010, relevant portion reads as under:-

The case of the petitioner is that they have completed more than 240 days with the opposite parties and their services have been retrenched illegally.

Sri V.R. Singh appearing for the opposite parties has drawn the attending of the court towards the judgment of Hon'ble Supreme Court in the case of ONGC LTD AND Another Vs. Shyamal Chandra BHOWVIK reported in (2006) Supreme Court Case 337. In paragraph 12 of this judgment their Lordship have held.

"The High Court s should not entertain writ petition directly when claim of service of more than 240 days in a year is raised whether a person has worked more than 240 days or not is a disputed question of facts which is not to be examined by the High Court. Proper remedy for the person making such a claim is to raise an industrial dispute under the Act so that the evidence can be analyzed and conclusion can be arrived at."

This Court feels that the writ petition is not maintainable.

The counsel for the petitioner says that it is very harsh upon the petitioners that the petition is being dismissed on this ground while it was earlier entertained by this Court Sri. V.R. Singh points that this was a conditional order and therefore, since the work was not available it has not been complied with.

Law is dynamic and keeps changing with the changing circumstances and values of the society. The order of Hon'ble Supreme Court is always binding on the High Courts, as such when the petition was filed it was entertained because the view was earlier different. Now with the progress this court is bound by their citation given by Sri V.R. Singh.

The petitioners may approach the Labour Court if they so choose as directed by Hon'ble the Supreme Court".

Aggrieved by order dated 27.10.2010 workman filed, special appeal No. 535/ 2011 Chandrika Prasad & 2 others before the Hon'ble High Court Lucknow disposed of by an order dated 27.07.2011, reads as under:-

Heard learned counsel for parties and perused the pleadings of writ petition.

Learned Counsel for appellants makes a limited prayer for grant of liberty in terms of order dated 03.12.2010, passed in Special Appeal No. 83; of 2010 (Ram Baran and another Versus Indian Telephone Industries Ltd. and others), In similar circumstances with liberty to approach this Labour Court. The relevant portion of order containing the liberty reads as under:-

"*We therefore, dismiss the special appeal, but give liberty to the appellants to approach the Labour Court, in case of appellants approach the Labour Court by following the process of law within a period of two months from today, the Labour Court shall decide the claim of the appellants without any period of six months thereafter."*

Thus, we dispose of this Special Appeal with limited indulgence while granting liberty in terms of the aforesaid order passed in Special Appeal No. 837/2010.

Special Appeal is, thus, disposed of.

In view of the above said fact of factual background the present claim petition filed before this Tribunal under section 2-A(1) r/w section 2-A(2) of the Industrial Dispute Act.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 30.11.2012 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 11.02.1991 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

In support of his argument above said plea he submits that admittedly as per the case of the claimant his services were terminated on 11.02.1991 aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

On behalf of appellant, it is submitted that in the present case, the services were retrenched/terminated by an order dated 11.02.1991 in contravention to the provisions as provided under section 25(F) of the Act, challenged by him by filling of writ petition No. 4191 (S/S) of 1991 which was dismissed by an order dated 27.10.2010 thereafter he filed a special appeal which was disposed of by an order dated 27.07.2011 and in pursuance to direction given in the special appeal by the Hon'ble High Court. The present claim petition has been filed under section 2-A(1) r/w section 2-A(2) of the Act, so the preliminary objection taken by the respondent is liable to be rejected and the case may be heard and decided on merit.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No. 24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

> *"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.*
>
> *(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.*
>
> *(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."*

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 11.02.1991, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 30.11.2012 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

> *"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.*
>
> *20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:*
>
> > *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*
>
> *21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3)*

of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date

of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9. It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

> *"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."*
>
> *(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)*

Reverting to the facts of the present case, it is not in dispute that the service of the workman was terminated on 11.02.1991 challenged by him by filing the present industrial dispute on 30.11.2012.

So, keeping in view the above said facts as well as that the workman cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 26.01.1991 and filed the present case on 30.11.2012 u/s 2-A (2) of the Act, as such the claim petition is barred by the period of limitation provide under section 2-A(3) of the Act liable to rejected.

So far the argument advanced on behalf of learned counsel for claimant that he has filed the present case in pursuance to the order passed by Hon'ble High Court in special appeal No. 535/2011 is conceived and incorrect because in the special appeal by order dated 27.07.2011 the Hon'ble High Court has directed appellant shall approach the Labour Court by filling of his claim with liberty given to the appellant to approach the Labour Court, within two month from today, however the present I.D. case has been filed by appellant on 30.11.2012 i.e. beyond the period which is provided by Hon'ble High Court by order dated 27.07.2011 in special appeal i.e. two months for approaching this Tribunal.

So appellant cannot derive any benefit on the direction given by Hon'ble High Court in the special appeal rather he has not followed the said direction in order to file the present case before this Tribunal.

For the foregoing reasons filed by workman/claimant is dismissed as barred by period of limitation under section 2-A(3) of the Industrial Dispute Act 1947, with liberty to the claimant/workman to pursue his case before appropriate forum as per law.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 27 जून, 2023

का.आ. 1137.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रबंध निदेशक और सीईओ, नोकिया सॉल्यूशंस एंड नेटवर्क्स इंडिया प्राइवेट लिमिटेड, बिड़ला सेंचुरियन, वर्ली, मुंबई; प्रबंध निदेशक एवं सीईओ, वोडाफोन आइडिया लिमिटेड, डीएलएफ साइबर ग्रीन्स, सेक्टर-24, गुरुग्राम, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री अजय कुमार, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 12/2021) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12/06/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-131 -आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th June, 2023

S.O. 1137.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 12/2021) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director & CEO, Nokia Solutions and Networks India Private Limited. Birla Centurian, Worli, Mumbai ;

The Managing Director & CEO, Vodafone Idea Limited. DLF Cyber Greens, Sector-24, Gurugram, and Shri Ajay Kumar, Worker, which was received along with soft copy of the award by the Central Government on 12/06/2023.

[No. L-42025-07-2023-131-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

Present: Justice ANIL KUMAR**,** Presiding Officer

I.D. No. 12/2021

Ref. No. K-10/1-12/2020-IR dated 18.01.2021

BETWEEN

Shri Ajay Kumar (UP) (ajju0121@gmail.com)

And

1. The Managing Director & CEO,
   Nokia Solutions and Networks India Private Limited.
   Birla Centurian, 10th Floor, Plot No. 794, B Wing, Pandurang Budhkar Marg, Worli,
   Mumbai-400030.

2. The Managing Director & CEO, Vodafone Idea Limited. DLF Cyber Greens,
   Tower A, 6th Floor, DLF Cyber City, DLF Phase II, Sector-24, Gurugram-122002.

AWARD

By order No. K-10/1-12/2020-IR dated 18.01.2021 the present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

> **"Whether Shri Ajay Kumar, Bss Cluster Lead can be treated as workman ? If so, whether the alleged termination of his services by the management of Nokia Solutions and Networks India Pvt. Ltd./ Vodafone Idea Limited is legal & justified? If not, to what relief the concerned workman is entitled to and from which date? "**

Accordingly, an industrial dispute No. 12/2021 has been registered on 28.01.2021.

From the perusal of record, the position which emerge out is that till date the claimant/workman has not filed any statement of claim.

Moreover, as a matter of fact and record, neither workman nor its authorized representative has turned up before this Tribunal nor has filed any statement of claim.

Findings & Conclusion:

Taking into consideration the fact that till date no statement of claim has been filed by the claimant in order to establish his claim as per the reference dated 18.01.2021.

So in view of the said facts, as well as the law laid by the Hon'ble High Court in the case of ***V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194*** as under:

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."*

In the case of ***M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164*** Hon'ble Allahabad High Court has held as under:

"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

And by the Hon'ble Allahabad High Court in the case of ***District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519****;* wherein it has been held as under:

"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."

As the workman has not filed any statement of claim/oral/documentary evidence, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 28 जून, 2023

का.आ. 1138.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स कलिंगा अच्युता ट्रेवल्स; मेसर्स आई ओ सी एल रिफाइनरी, जगतसिंघपुर के प्रबंधतंत्र के संबद्ध नियोजकों और पेट्रोलियम प्रोडक्ट्स हैंडलिंग एंड कर्रिएर्स एम्प्लाइज यूनियन, जगतसिंघपुर के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर, के पंचाट (रिफरेन्स न.-27/2021) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 28.06.2023 को प्राप्त हुआ था।

[सं. एल-30011/3/2021-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 28th June, 2023

S.O. 1138.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 27/2021) of the Central Government Industrial Tribunal cum Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s Kalinga Achyuta Travels; M/s IOCL Refinery, Jagatsinghpur and Petroleum Products Handling & Carriers Employees Union, Jagatsinghpur which was received along with soft copy of the award by the Central Government on 28.06.2023.

[No. L-30011/3/2021-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present: Sri DINESH KUMAR SINGH, Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE No. 27/2021

Date of Passing Award – 10th February, 2023

Between:

1. M/s. Kalinga Achyuta Travels,
   At. Udayabatta, Dochhaki, PO. Paradipgarh,
   Jagatsinghpur- 754 141.

2. The Executive Director,

M/s. IOCL Refinery, Paradip,
Dist. Jagatsinghpur, Odisha – 754 142 ….1st Party-Managements.

(And)

The General Secretary,
Petroleum Products Handling & Carriers Employees
Union, Ex-Old Post Office Building, Nuabazar,
Paradip Port, Jagatsinghpur, Odisha – 754 142 …2nd Party-Workman.

Appearances:

Sri Prasant Kumar Jena, Authorized Representative.	…	For the 1st Party-Management No. 1
None	…	For the 1st Party-Management No. 2
Sri Sanatan Behera	…	For the 2nd Party-Union.

AWARD

The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act vide their Letter No. L-30011/3/2021 - IR(M), dated 26.03.2021 to this Tribunal for adjudication to the following effect:

> **Whether the action of the management of M/s. Kalinga Achyut Travels, Contractor of IOCL, Paradip in dismissing and denying the jobs to seventeen workmen namely 1) S/Shri Baul Sharma, 2) Hrusikesh Sahoo, 3) Jagas Belso, 4) Manoj Parida, 5) Udya Kumar 6) Ranjan Behera 7) Prasanta Sahoo, 8) Bhagyadhar Sahoo, 9) Fakir Pahi, 10) Ananta Marandi 11) Paresh Mallick 12) Bikram Keshari Nayak 13) Pradipta Mallick 14) Jugajoti Khuntia 15) Bidyadhar Dalai, 16) Manoj Kumar Sahoo & 17) Alok Sahoo, working as Drivers during the pendency of conciliation violating section 33(2(b) of the I.D. Act, 1947 is legal and/or justified? If not, what relief the workmen are entitle to?**

2. After receipt of the schedule of the reference notice was issued to the 2nd party-Union for filing of statement of claim and subsequently the General Secretary of the second party-Union and the 1st Party-Management No. 1 namely M/s. Kalinga Achyut Travels appeared and jointly filed memorandum of settlement in Form-H along with a petition for withdrawal of the I.D. Case No. 27/2021.

3. The 1st Party-Management No. 2 i.e. the Executive Engineer, IOCL Refinery has not appeared before this Tribunal.

4. The 2nd Party-Union and the 1st Party-Management No. 1 have filed a memorandum of settlement stating therein that the Contractor, 1st Party-Management No. 1 Kalinga Achyuta Travels agreed to engage eight number of workmen namely Hrusikesh Sahoo, Jagas Behera (Jagas Belso) Udaya Kumar, Bhagydhar Sahoo, Fakir Pahi, Paresh Mallick, Bikram Keshari Nayak and Alok Sahoo. It has been also stated that the workmen Manoj Parida, Ranjan Behera, Pradipta Malick, Bidyadhar Dalai, Manoj Kumar Sahoo are engaged with another contractor M/s. Rudrambi Initiator Pvt. Limited, so the Union has no grievances. It has been further stated that the workmen Prasanta Sahoo is at present engaged with the contractor M/s. Sashi Catering so the Union has no grievances and the workman namely Ananta Marandi is engaged with IFFCO site so the Union has also no grievance. Further, it has also stated that the workman Jugajyoti Khuntia is at present engaged to work at IOCL maintenance and as such the Union has no grievance and the workman Babul Sharma has been black listed at IOCL so the Union has no grievance against the 1st Party-Management No. 1.

5. After going through the Memorandum of settlement filed in Form-H it appears that there are signatures of Sri Sanatan Behera, General Secretary, Paradip Port & Dock Mazdoor Union, Paradip and Sri Prasanta Kumar Jena, M/s. Kalinga Achyuta Travels on it.

6. It further appears that all the concerned workmen have also signed the memorandum of settlement and the same have been identified by the 2nd Party-Union. 7. Now after examining the memorandum of settlement it appears that the 2n Party-Union and the 1st Party-Management No. 1 have settled their dispute outside the court and consequently they have arrived at a settlement.

8. In view of above circumstances it appears that the dispute between the concerned workmen of the 2nd Party Union with the 1st Party Management No. 1 does not exist as they have settled their dispute outside the Tribunal and filed the memorandum of settlement in Form-H.

9. After considering all the facts and circumstances of the case, the Tribunal is of the view that whatever dispute existed between the 2nd Party-Union and the Management No. 1 has already been settled and the award is passed in the light of the settlement arrived at between the 1st Party-Management No. 1 and the 2nd Party-Union. The Memorandum of settlement filed in this case is part of the Award.

10. This is the Award of this Tribunal.

Dictated & Corrected by me.

DINESH KUMAR SINGH, Presiding Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

FORM No. H

(See Rule – 58)

Memorandum of Settlement

Name of the 1st Party-Managements:-

1. M/s. Kalinga Achyuta Travels,
   At. Udayabatta Dochhaki
   Po. Paradipgarh, Dist. Jagatsinghpur-754141

2. The Executive Engineer,
   M/s. IOCL Refinary, Paradip,
   Dist-Jagatsinghpur, Odisha-754142

And

Name of the 2nd Party-Union:-

The General Secretary,
Petroleum Products Handling & Carriers
Employees Union, Ex-Old Post Office Building
Nuabazr, Paradip Port, Jagatsinghpur, Odisha-42

SHORT RECITAL OF THE CASE

Whereas the 2nd Party-Union upon raising of an Industrial Disputes the Government of India has referred vide File No. L-30011/3/2021-IR(M), dated 26.03.2021 "whether the acton of the Management of M/s. Kalinga Achyut Travels, Contractor of IOCL, Paradip in dismissing and denying the jobs to seventeen workmen namely (a) Shri Babul Sharama (2) Shri Hrusikesh Sahoo, (3) Shri Jagas Belso, (4) Shri Manoj Parida, (5) Shri Uday Kumar (6) Ranjan Behera, (7) Sri Prasanta Sahoo, (8) Shri Bhagyadhar Sahoo, (9) Shri Fakir Pahi, (10) Shri Ananta Marandi, (11) Shri Paresh MAllick, (12) Shri Bikaram Keshari Nayak, (13) Shri Pradita Mallick, (14) Shri Jugajoti Khuntia, (15) Shri Bidyadhar Dalai, (16) Shri Manoj Kumar Sahoo and (17) Shri Alok Sahoo working as drivers during the pendency of conciliation violating Section 33-2(b) of the I.D. Act, 1947 is legal and /or justified? If not, what relief the workmen are entitled to?"

During the pendency of the proceedings both the parties wanted for an amicable settlement of the claim case and accordingly both the parties have agreed to settle the case on 25.01.2022 as per the TERMS AND CONDITIONS here under:-

TERMS AND CONDITIONS

1. That, the Contractor 1st Party-Management No. 1 M/s. Kalinga Achyuta Travels agreed to engage the five numbers of the retrenched workmen namely S/Shri Hrushikesh Sahoo, Nrusingha Swain, Sanjaya Kumar Swain, Bikram Keshari Nayak and Susanta Kumar Sahoo from 01.01.2022 at IOCL refinery in their previous work. If the Contractor fails to engage them he will pay the salary to these five number of workers irrespective of worked or not.

2. That, the gate passes will be issued by the Contractor, 1st Party-Management No. 1 immediately i.e. before 31st January, 2022.

3. That, it is further agreed between the parties that they shall submit this Memorandum of Settlement before the Presiding Officer, CGIT-cum-Labour Court, Bhubaneswar in I.D. Case No. 27/2021 for recording and acceptance of the settlement between the parties.

In witness whereof the parties hereto have signed on this settlement on this day the 01.02.2022 at Bhubaneswar.

Signature of the 2nd Party-Union.	Signature of the 1st Party-Management No.
Sanatan Behara General Secretary Paradip Post &Dock Mazdoor Union (INTUC), Paradip	1. M/s Kalinga ACHYUTATRAV Prasant Kumar Jena Managing Partner 2.
In Present of Witnesses:- 1. Janak Kumar Jena 2. Manoj Kumar Sahu 1. Paresh Mallick 2. Bidyadhar Dalai, 3. Fakir Pahi, 4. Alok Kumar Sahoo 5. Uday Kumar Palei 6. Hrusikesh Sahoo 7. Pradita Mallick 8. Bikaram Keshari Nayak 9. Manoj Sahoo 10. Prasanta Sahoo 11. Bhagyadhar Sahoo 12. Jagas Belso 13. Ranjan Behera 14. Manoj Parida	Identified By Union Sanatan Behara 23.12.2022 Prasant Kumar Jena 23.12.2022

नई दिल्ली, 30 जून, 2023

का.आ. 1139.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफॅ बडोदा के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (179/2018) प्रकाशित करती है।

[सं. एल-12011/38/2018-आईआर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 30th June, 2023

S.O. 1139.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.179/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen.

[No. L-12011/38/2018- IR(B-II)

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM -LABOUR COURT, AHMEDABAD

Present: SUNIL KUMAR SINGH-I, Presiding Officer, CGIT cum Labour Court, Ahmedabad,

Dated 27th March, 2023.

Reference: (CGITA) No- 179/2018

1. The Assistant General Manager (HR),
Bank of Baroda, Head Office, Mandvi,
Vadodara(Gujarat)

2. The Genral Manager,
Bank of Baroda, G-Block, C-26,
Bandra Kurla Complex,
Bandra (East)Mumbai-400005 …..First Party

V

The General Secretary,
Bank of Baroda Workers Organisation,
C/o. N. H. Dave, C-864, Satyanarayan Mandir,
Sankdi Sheri, Kesur Mama Chakla,
Bharuch-392001. ….Second Party

Advocate for the First Party employer : Shri K. V. Gadhia & Shri M. K. Patel
Advocate for the Second Party worman : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12011/38/2018-IR(B-II) dated 27.11.2018 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the demand raised by Bank of Baroda Workers Organization to the management of Bank of Baroda for not allowing the workmen/officers of erstwhile South Gujarat Local Area Bank Limited(amalgamated with Bank of Baroda in 2004) to the original pension scheme of Bank of Baroda (Employees) Pension Regulation, 1995 is legal and justified? If so, what relief the workmen are entitled to?"

1. Today, the matter was called out. First Party employer is represented through Ld. Counsels Shri K. V. Gadhia and Shri M. K. Patel. None responded for Second Party / Workmen's union. The reference dates back to 27.11.2018. The notice Ex. 3 was served on second party by acknowledgement Ex. 4, wherein the second party was asked to submit the statement of claim on 07.08.2019. Second Party workmen's union has been afforded 16 opportunities to file its statement of claim and last opportunity was afforded to workmen's union on 19.12.2022, but for no avail. It appears that the Second Party workmen's union is not interested to proceed further in the matter.

2. There is no evidence on record to substantiate the demand of Bank of Baroda Worker's Organization under reference. Hence the reference is answered, with the observation that the demand raised by Bank of Baroda Workers Organisation to the management of Bank of Baroda for not allowing the workmen/officers of erstwhile South Gujarat Local Area Bank Limited(amalgamated with Bank of Baroda in 2004) to the original pension scheme of Bank of Baroda (Employees) Pension Regulation, 1995 is not legal and justified. The workmen's union is not entitled for any relief."

Let two copies of the Award be sent to the Appropriate Government for the needful and for publication U/s 17(1) of Industrial Disputes Act.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 30 जून, 2023

का.आ. 1140.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांडला पोर्ट ट्रस्ट के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (65/2013) प्रकाशित करती है।

[सं. एल-37011/24/2012-आईआर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 30th June, 2023

S.O. 1140.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 65/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Kandla Port Trust and their workmen.

[No. L-37011/24/2012-IR (B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present: SUNIL KUMAR SINGH-I, Presiding Officer, CGIT cum Labour Court, Ahmedabad,

Dated 28th March, 2023.

Reference: (CGITA) No.- 65/2013

The Secretary,
Kandla Port Trust, Administrative Office,
P.O. Box No. 50, Gnadhidham(Kutch),
Kutch(Gujarat)-370201 …..First Party

V

The General Secretary,
Transport & Dock Workers Union,
21, Yogesh Building, Plot No. 586,
12-C, Gandhidham (Kutch),
Kutch (Gujarat) …..Second Party

Advocate For the First Party : Shri K. V. Gadhia & Shri M. K. Patel
Advocate For the Second Party : Shri N. H. Rathod

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-37011/24/2012-IR(B-II) dated 07.03.2013 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of KPT management in not regularizing the services of Shri Issaq Jusab, D/R Khalasi even though he has completed 240 days in many years since May, 1972 is justified? What relief the applicant is entitled to?"

1. Today matter is called out. Shri K. V. Gadhia & Shri M. K. Patel Ld. Advocates are present for the First Party and Shri N. H. Rathod, representing second party, the General Secretary, Transport & Dock Workers Union, Gandhidham. The Second Party workman's union has filed withdrawal pursis vide Ex.7 along with union's letter dated 21.03.2023, M-7/1, wherein it is prayed that the SP union does not want to pursue the matter further as the workman has expired and his legai heirs are not interested to continue with the proceedings. Withdrawal is not opposed by First Party. The Second party/workman's union is permitted to withdraw the reference as prayed for. Therefore, the reference is disposed of as withdrawn by the second party workman's union.

2. Thus the reference is finally disposed of as withdrawn.

Let two copies of the Award be sent to the Appropriate Government for the needful and for publication U/s 17(1) of Industrial Disputes Act.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 30 जून, 2023

का.आ. 1141.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विजय बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (8/2008) प्रकाशित करती है।

[सं. एल-39025/01/2023-आईआर(बी-II)-18]

सलोनी, उप निदेशक

New Delhi, the 30th June, 2023

S.O. 1141.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.8/2008) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad as shown in the Annexure, in the industrial dispute between the management of Vijaya Bank and their workmen.

[No. L-39025/01/2023- IR(B-II)-18]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT AT HYDERABAD

Present: - Sri IRFAN QAMAR, Presiding Officer

Dated the 4th day of May, 2023

INDUSTRIAL DISPUTE L.C.No. 8/2008

Between:

Sri E. Srisallam
S/o. Late Achaiah
R/o. 18-4-15/1,
Gandhinager Falaknuma,
Hyderabad. ….Petitioner

AND

1. The Dy. General Manager
Vijaya Bank, M.G. Road, Trinity Circle
Bangalore 560 001.

2. The Branch Manager,
Vijaya Bank, Malakpet Branch
Hyderabad. Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates
For the Respondent: M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

Sri E. Srisallam who worked as General Mazdoor (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents Vijaya Bank seeking for

reinstatement into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The Brief averments of the claim petition filed by the Petitioner are as under**:

It is submitted that the Petitioner has joined the Respondent bank on 21.1.1994 as a Sub-staff at Bank Street Branch, Koti, Hyderabad. Petitioner worked in various branches, subsequently petitioner was promoted as a Clerk at Errakunta Branch Khammam District. He was transferred to Malakpet Branch, Hyderabad, since the date of his appointment petitioner discharging his duties to the entire satisfaction of his superiors. While so petitioner was discharging his duties as Clerk, the respondents bank has issued charge sheet dated 30.5.2003 alleging that the petitioner has misappropriated the amounts for the period from 29.6.2002 to 13.12.2002. The Charge Sheet is as follows:

"A. Action of the CSE of misappropriating an aggregate amount of Rs. 70,140/- remitted by seven different customers detailed in the preamble is violative of the instructions contained in HO Circular No. 32/2001 Dt. 23/02/2001 and prejudicial to the interest of the bank and hence, the same constitutes an act of gross misconduct.

B. Action of the CSE of issuing 9 cheques detailed in the preamble of the charge sheet without maintaining sufficient balance in CSE's accounts amounts to breach of prescribed rules of business and violations of the instructions contained in HO Circular 122/87 Dt. 26/06/1987 and Codified Circular 46/93 Dt. 06/04/1993 and hence, the same constitutes an act of gross misconduct.

C. Action of the CSE of fraudulently/unauthorized removing the cheque books of 25 leaves each bearing No. 120601 to 120625 and 120726 to 120750 from the custody of the concerned officer is violative of the prescribed rules/procedure of the Bank and hence the same constitutes and act of gross misconduct. "

With regard to first charge petitioner has not violated instructions contained in H.O. Circular 32/2001 Dt. 23/02/2001, and he has not misappropriated the amounts of Rs. 70,140/-. With regard to 2nd charge it is submitted that petitioner has not violated instructions or guidelines contained in H.O. Circular 122/87 Dt. 26/06/1987 and Codified Cir. 46/93 Dt. 06/04/1993. With regard to 3rd charge petitioner has not violated prescribed guidelines and he has not committed irregularities as alleged in the charge. Petitioner made representation to the respondent bank stating that due to ill health he could not submit his explanation within stipulated time in the charge sheet and requested the authorities to grant time for submitting detailed explanation to the charge sheet, instead of granting time and waiting for the explanation to the charge sheet, the respondent bank ordered a departmental enquiry into the alleged charges. In the enquiry petitioner could not participate since he was suffering from ill health, and same was informed to the respondent bank along with medical certificates and requested time to attend the enquiry proceedings. Instead of granting time in the enquiry, the enquiry officer conducted the ex parte enquiry and submitted his report that charges held proved. Petitioner also submitted medical reports to the respondent bank; those certificates were not considered by the disciplinary authority as well as enquiry officer before preceding the matter. The respondent bank obtained the petitioner statement under threat and coercion. It is submitted that without considering the representations submitted by the petitioner for the postponement of enquiry proceedings, instead of considering the same the enquiry officer has concluded ex-parte enquiry. In the enquiry the Respondent/Management bank has examined the witnesses and marked exhibits from M 1 to M28. Those witnesses were not cross examined by the petitioner, and the documents marked as exhibits in the enquiry were not furnished by the respondent bank to the petitioner. The enquiry officer has not given reasonable opportunity to defend his case. The action on part of the enquiry officer in giving findings that the charges held proved against the petitioner is wholly illegal, arbitrary and in violation of Principles of natural justice. It is submitted that petitioner made detailed representation to the Deputy General Manager & Disciplinary Authority Personnel Department (IRD) H.O. Bangalore stating that due ill health he could not attend the enquiry and requested the enquiry officer to adjourn the matter for some time It is submitted that after receipt of show cause notice petitioner submitted detailed explanation denying charges leveled against him, and also denied various allegations made in the show cause notice, and requested the authority to drop all further proceedings in the matter. Without considering the facts and circumstances of the case the disciplinary authority has passed removal order dated 12.1.2004. No valid reasons are assigned in the removal order. The punishment of removal from service is shockingly disproportionate and unjust. The irregularities referred to in the Charge Sheet dated 30.5.2003 were not established either on record or on the basis of the evidence adduced before the enquiry officer. The evidence available before the enquiry clearly shows that the Petitioner was not guilty of the allegations and the allegations were not proved. Thus, the disciplinary authority ought to have dropped the punishment of removal from service. The enquiry officer has not considered the request of the petitioner and proceeded with the enquiry and conducted the ex-parte enquiry. It is submitted that before issuing show cause notice of removal, petitioner submitted representation to the respondent bank on 24.10.2003 and 11.11.2003 stating that ex- parte enquiry was conducted he further stated that only due to his sickness he could not attend the enquiry. He also stated that due to severe ill ness and recurrence of the illness he was admitted at Govt. Hospital King Koti, Hyderabad for taking treatment. He informed the same to the higher officials of the respondents vide his letter Dt. 10.9.2003. Immediately after recovery from ill health petitioner made another representation on 12.9.2003 if the disciplinary authority will permit to attend the enquiry he will

attend. In spite of receiving the same the respondents has not taken any steps. Subsequent to that also petitioner made representation to the department with regard to conduct of denovo enquiry. Management instead of conducting denovo enquiry, issued show cause notice which is illegal. It is submitted that based on the perverse findings of the inquiry officer the disciplinary authority has issued a show cause notice of removal from service dated 18.12.2003. Before passing show cause notice of removal the disciplinary authority has not given reasonable opportunity to defend his case. It is submitted that aggrieved by the orders of the disciplinary authority dated 12.02.2004, petitioner preferred an appeal to General Manager the (personnel). The appellate authority rejected the appeal vide a proceedings in mechanical manner. It is submitted that the disciplinary authority and Appellate Authority ought to have seen that there is no misappropriation by the Petitioner or any loss caused to the bank. The disciplinary authority and the Appellate Authority failed to see that the punishment of removal from service is grossly disproportionate to the gravity of charges. It is submitted that the charges framed against the petitioner is wholly misconceived and unwarranted. Ever since his illegal termination, the Petitioner has not been able to find alternative employment and consequently facing severe financial hardships. Hence prayed to declare the action of the Respondents in imposing the punishment of compulsory retirement vide proceedings dated 12.1.2004 which was confirmed by the Respondent No.1 vide order dated 26.9.2005 is illegal and arbitrary, consequently direct the Respondents to reinstate the Petitioner into service with all attendant benefits.

3. **The Respondent filed counter denying the averments made by the Petitioner in brief as under:**

Respondent submitted that Shri E. Srisailam, the petitioner was appointed as a Peon in the service of the respondent Bank on 21.1.1984. Subsequently he was promoted to the post of Clerk on 19.7.1994. While working as a Clerk at Bank's Malakpet Branch, Hyderabad, the petitioner was put in charge of single window counter (SWC) W.e.f.21.6.1998 as per the job allocation effected and the same was duly acknowledged by him. On 28.1.2003, Dr. T. Mahendra Reddy, a customer of Malakpet Branch, Hyderabad maintaining SB A/c.No. 12656, lodged a written complaint with the then Branch Manager Shri B. Shivakumar alleging that Rs.3,400/- remitted by him on 15.1.2003 at the Single Window Counter (SWC) manned by Shri E. Srisailam was misappropriated by him. On the basis of the written complaint of Dr.T. Mahendra Reddy, supported by relative documentary evidence, Shri Srisailam was placed under suspension by the Disciplinary Authority vide his order then No.PER:IRD:HYD:VIG:703:2003 dated 30.1.2003. The said suspension order was delivered to the delinquent employee on 31.1.2003. Subsequently, Shri E. Srisailam was issued with a charge sheet bearing No.PER:IRD:HYD:VIG:CS:162:2003 dated 30.5.2003 for the following fraudulent acts of misconduct committed by him while discharging his duties as Single Window Operator at Malakpet Branch, Hyderabad.

a. Shri T. Mahendra Reddy holder of SB A/c. 12656 remitted an amount of Rs.3,400/- on 15.1.2003 at the SWC-2 manned by Shri.Srisailam for crediting the same to his SB A/c. 12656. On 24.1.2003, he came to the branch to deposit Rs.2000/- and observed that the cash remitted by him on 15.1.2003 was not credited to his said SB account. On making enquiries with Shri E. Srisailam about non-crediting of the said amount, he informed that the amount remitted on 15.1.2003 was erroneously credited to some body's account and the same would be re- credited the next day. Shri T. Mahendra Reddy again visited the branch on 28.1.2003 in order to confirm that the cash remitted by him on 15.1.2003 is credited to his SB Account 12656. On account of non-crediting of the said amount to his SB account, a cheque bearing No.131884 issued by him in favour of Citi Bank towards settlement of credit card bills on account of his credit card 5546 1991 3416 4011 was returned for the reason "Insufficient Balance". The cheque in question was returned on 16.1.2003.

b. Shri D.M. Narasimha Rao, maintaining SB A/c 9675 remitted a sum of Rs.7,500/- on 03.1.2003 at SWC-2 manned by Shri E.Srisailam. Though he acknowledged the cash remitted by the customer, he failed to enter the same in the system and credit to customer's SBA/c.9675 on 03.1.2003. The customer visited the branch on 5.2.2003 and on finding non-crediting of the amount to his SB Account, he enquired with Shri E.Srisailam. As he had already misappropriated the cash remitted by the customer on 03.1.2003, he pleaded with the customer not to lodge any complaint with the Branch Manager and wait upto 1.2.2003 for reimbursing the cash misappropriated by him. On account of non-crediting of the cash remitted by Shri O.M. Narasimha Rao on 3.1.2003, a cheque bearing No.142140 dated 10.1.2003 for Rs.3,308/- issued by him in favour of M/s. Can Fin Homes was returned on 23.1.2003.

c. The customer of SB A/c 10665, Shri A. Srinivasan remitted an amount of Rs.7,500/- on 6.1.2003 at SWC-2 for crediting the same to his said SB A/c.10665. Though the cash was acknowledged by Sri E.Srisailam in violation of the instructions contained in H.O.Circular32/2001, without making necessary entries in the system, he has misappropriated the cash remitted by Shri A.Srinivasan. On account of non-crediting of the said amount, a cheque bearing No.121081 dated 7.2.2003 for Rs.7,494/- issued by Shri A. Srinivasan in favour of M/s.Maruti Country wide was returned for insufficient balance.

d. Shri V. Venkatanarayana, holder of SB A/c.12929, remitted an amount of Rs.6,500/- at SWC-2. Though Sri E.Srisailam acknowledged the cash on the counterfoil, he failed to make necessary entries in the system and misappropriated the said cash. On account of non-crediting of the cash remitted by Shri. Venkatanarayana on 28.1.2003, a cheque bearing No.130171 dated 23.1.2003 issued by him for Rs.6, 228/- in favour of BSNL

was returned for the reasons "insufficient balance" which resulted in disconnection of his STD line and also entalled payment of penalty.

e. M/s Kranti Book Centre, who are maintaining OD A/c 3/01 remitted Rs.15,000/- on 10.10.2002 and Rs.20,200/- on 17.1.2003 at SWC-2 for crediting the same to their OD account 3/01, By misutilising the position as In-charge of SWC-2, Sri E.Srisallam failed to enter the cash remitted by the party in the system and misappropriated the same. Shri V.Rathnakar, who is maintaining SB A/C.11349 remitted an amount of Rs.2,540/- on 25.1.2003 at SWC-2. Though Sri E.Srisallam acknowledged the cash on the counterfoil, he failed to feed the same into the system

f. Sri Kondal Reddy holder of SB A/c.13513, remitted an amount of Rs.7,500/- on 4.1.2003 at the SWC-2 manned by Shri E.Srisailam for crediting the same to his SB A/c. though he acknowledged the cash, he failed to feed the same into the system and misappropriated the same without crediting to customers account and misappropriated the same without crediting to customer's account.

g. In violation of instructions contained in H.O. Circular 122/87 dated 26.6.1987 and Codified Circular 46/93 dated 6.4.1993, Sri E.Srisailam issued the following cheques without maintaining sufficient balance in his SB A/c.50193:

Cheque No.	Date of cheque	Amount of cheque	Drawn in favour of	Date of return
13782	24.6.2002	2,200/-	P.A. Sarma	29.6.2002
123854	18.6.2002	3,960/-	G. Santosh Kumar	9.7.2002
137812	24.6.2002	2,200/-	P.A. Sarma Sarma	11.8.2002
114384	20.8.2002	974/-	Associated finance	20.8.2002
120726	5.9.2002	998/-	-Do-	5.9.2002
895974	5.9.2002	734-	-Do--	5.9.2002
891365	5.12.2002	734/-	-Do-	5.12.2002
120729	5.12.2002	998/-	-Do-	5.12.2002
891343	12.12.2002	1,027/-	Bajaj Auto Finance	13.12.2002

On 7-8-2002 and 8-8-2002, Sri E.Srisailam unauthorized and without the consent of concerned officer removed two cheque books of 25 leaves each bearing Nos.120601 to 120625 and 120726 to 120750. As the CSE failed to submit his written statement of defence on the charges levelled against him despite being allowed more than ample time, the Disciplinary Authority, in accordance with the prevailing norms for disciplinary proceedings, ordered for a departmental enquiry to examine the veracity of charges levelled against the CSE. Accordingly, Shri U. Madhava Shettigar, Senior Manager, Personnel Dept., (IRD), Head Office, Bangalore and Shri M.Sam Sunder Raj Manager, Regional Office, Hyderabad were appointed as Enquiry Officer and Presenting Officer respectively vide orders of the Disciplinary Authority dated 21.6.2003. A Registered Post/A/D notice was served upon Shri E.Srisailam on 02.07.2003 informing him that the departmental enquiry into the charges levelled against him, shall be held on 6.8.2003 at Malakpet Branch, Hyderabad. On grounds of feigned sickness Petitioner remained absent for two dates of domestic enquiry. Subsequently, the Enquiry Officer vide his registered A/D Notice dated 12.8.2003, informed the CSE that the captioned adjourned departmental enquiry shall be held on 3.9.2003 at Malakpet Branch, Hyderabad. Keeping in view the fact that the said departmental enquiry was already adjourned twice on the grounds of feigned sickness of the CSE, the CSE was categorically informed that in case he failed to attend the enquiry on 3.9.2003, the same shall be conducted ex-parte. As scheduled, the adjourned enquiry was held on 3.9.2003 at Malakpet Branch at 10.00 AM. On the scheduled date, the Enquiry Officer and Presenting Officer waited for the CSE till 12.05 PM and as the CSE neither participated in the departmental enquiry nor send any communication to the Enquiry Officer with related documentary evidence for another adjournment, the Enquiry Officer was left with no other option but to conduct the departmental enquiry ex-parte. The departmental ex-parte enquiry which commenced on 3.9.2003 was concluded on 4.9.2003. Immediately on conclusion of the ex-parte departmental enquiry, the Enquiry officer forwarded copies of all the prosecution documents as well as a copy of the proceedings of the departmental enquiry to the CSE by Registered Post with Acknowledgment Due to enable him to submit his written brief. Though the said ex-parte departmental proceedings as well as copies of prosecution documents were received by the CSE on 27.9.2003, and despite allowing additional time, the CSE failed to submit his written brief to the Enquiry Officer. It is respectfully submitted that during the course of the ex-parte departmental enquiry, the presenting officer produced 32 prosecution documents and also examined eight witnesses on behalf of the Management. It is respectfully submitted that after assessing the evidentiary value of the prosecution document and

also the depositions made by the respective witnesses, whose money was misappropriated by the CSE and also keeping in view of the corroborative evidences, the Enquiry Officer held all the three charges as "PROVED". It is respectfully submitted that keeping in view of the principles of natural justice and also to render one more opportunity to the CSE, a copy of the report of the findings of the departmental enquiry was forwarded to the CSE vide Disciplinary Authority's Letter No.PER:IRD:HYD:VIG:6083:2003, dated 23.10.2003 with a direction to submit his representation, if any, on the findings of the enquiry, within 7 days of receipt of the same. It is respectfully submitted that the CSE submitted his representation dated 11.11.2003 on the findings of the enquiry as under:

(i) He joined the Bank in the year 1984 as a sub-staff and keeping in view his devotion, honesty and loyalty in the year 1994, he was promoted to clerical cadre. He belonged to downtrodden community. He is having 3 unmarried daughters besides ailing aged parents.

(ii) He had been keeping the Enquiry Officer informed of his ill health. On account of financial problem as well as bad health, he was under tremendous mental pressure. He was admitted to the Govt. Hospital on 2.9.2003 and was discharged on 5.9.2003. He had faxed his letter dated 1.9.2003 to the Enquiry Officer informing him about his sickness and inability to attend the enquiry. Inspite of his repeated request, the Enquiry Officer had gone ahead in conducting ex-parte enquiry and his submitted false findings.

(iii) The Enquiry Officer vide his Letter dated stated 15.09.2003 that his letter dated 01-09-2003 was received by him on 06.09.2003. In order to complete the enquiry in haste he had deliberately avoided considering his request for adjournment on the ground that he received his letter on 06.09.2003 after reaching Head Quarters. In fact he had taken up the matter with the Disciplinary Authority vide his letter dated 24.10.2003.

(iv) The Enquiry Officer also did not consider his request to allow him time to submit his written brief after hearing from the Disciplinary Authority. As the Enquiry Officer conducted the enquiry by back door method, he had requested to quash the entire proceedings.

Though, the CSE was reportedly hospitalized for his feigned sickness at Hyderabad and it was well within his knowledge that the re-scheduled departmental enquiry shall commence at Hyderabad on 3.9.2003, the CSE neither made any attempt to contact the Enquiry Officer on that particular day nor sent any written message along with a medical certificate/letter from the competent doctor stating the genuine medical reason for his inability to attend the departmental enquiry at Hyderabad. In fact, on 3.9.2003, the Enquiry Officer had waited for the CSE to participate in the enquiry proceedings upto 12.05 P.M. The admission card purported to have been issued by M/s A.P. Vaidya Parishad, Kind Koti, Hyderabad on 1.9.2003 as well as 5.9.2003 clearly established that he was not at all suffering from any chronic disease that prevented him from attending the departmental enquiry. As per the said admission cards purported to have been issued by M/s A.P.Vaidya Praishad, the CSE was treated as an outpatient vide reference No.28278. It is submitted that as regards submission of the written brief by the CSE, the Enquiry Officer after concluding the proceedings of the departmental enquiry on 4.9.2003, forwarded a copy of the proceedings as well as copies of the prosecution documents to the CSE vide his letter dated 4.9. 2003 with an instruction to submit defence documents, if any, and also the written brief on or before 11.9.2003. The Presenting Officer too forwarded a copy of his written brief to the CSE on 13.9.2003. Despite allowing sufficient time to the CSE by the Enquiry Officer, the CSE failed to submit his written brief, keeping in view the principles of natural justice, the CSE was provided with more than permitted time at every stage of the disciplinary proceedings. It is submitted that as per the provisions contained in the Memorandum of Settlement on Disciplinary Action Procedure for Workmen dated 10.4.2002, the proposed punishment was communicated the CSE vide No.PER:IRD:HYD:VIG:6656:2003, dated 24.11.2003 with a direction to submit his representation on the proposed punishment within 7 days. However, the CSE vide his representation dated 10.12.2003, without offering any specific reason, sought additional 15 days time to submit his representation on-the proposed punishment. Accordingly, the CSE was granted additional time upto 26.11.2003. It is submitted that the CSE submitted his representation dated 22.12.2003 on the proposed punishment pleading as under: He could not participate in the enquiry as he was suffering from ill health. The management instated of granting the time conducted ex-parte enquiry. Though he had submitted a certificate in support of his sickness the same was not considered by the Enquiry Officer On behalf of the Bank, 7 witnesses were examined but those witnesses were not cross-examined by him. The Enquiry Officer has not given a reasonable opportunity to defend himself in the case. Hence, the action of the Enquiry Officer and his findings are illegal, arbitrary, unjust and in violation of the principles of natural justice. It is submitted that before issuance of the show cause notice on the proposed punishment, he had submitted his representation dated 24.10.2003 and 11.11.2003 wherein he has stated that owing to his illness he could not participate in the proceedings of the departmental enquiry and accordingly requested De Novo enquiry in to the charges leveled against him. The management, instead of conducting a De Novo enquiry, issued a show cause notice on the proposed punishment which is illegal. The Disciplinary Authority has issued the show cause notice on the proposed punishment without giving a reasonable opportunity to defend himself. There is no evidence before the Enquiry Officer as well as the Disciplinary Authority that he had committed the irregularities alleged in the charge sheet dated 30.11. 2003. It is submitted that after carefully going through the proceedings of the enquiry, the prosecution documents produced by the Presenting Officer during the course of departmental enquiry, depositions

made by the Management customers whose money Witnesses especially, the misappropriated by the CSE, and also the representations dated 11.11.2003 and 22.12.2003 submitted by the CSE on the observed as under: -(i) The very existence of the Banking transaction is dependent on the confidence and faith reposed by the general public. The CSE, who was put in charge of the SWC (Single Window Counter)-2 at Malakpet Branch,Hyderabad, was vested with certain independent powers subject to compliance of the rules/instructions contained in H.O. Circular 32/2001 dated 23.2.2001, to carry out banking transactions with the customers of the branch. The CSE taking advantage of his placement and also misutilizing his position misappropriated the cash remitted by aforesaid 7 customers on different dates. (ii) Keeping in view many facets of the principles of natural justice, though the CSE was provided with ample opportunities at every stage of the disciplinary proceedings, he failed to produce any fresh documents or show existence or extenuating circumstances in defence of the charges leveled against him, in order to modify the punishment already proposed and communicated to him. The proven acts of misconduct committed by the Charge Sheeted Employee, Shri. E.Srisailam, tarnished the image of the Bank in the eyes of the public. The proven fraudulent acts of misconduct committed by the CSE are so grave and serve; any further continuance of his findings of the departmental enquiry and also the proposed punishment communicated to him, "Removal from the services of the Bank with immediate effect." and accordingly the Petitioner was removed from the services of the Bank w.e.f. 12.1.2004. It is further submitted that customer not to lodge any complaint with the Branch Manager and wait upto 1.22003 for reimbursing the cash misappropriated by him. On account of non-crediting of the cash remitted by Shri. O.M.Narasimha Rao on 3-01-2003, a cheque bearing No.142140 dated 10-01-2003 for Rs.3,308/ issued by him in favour of M/s Can Fin Homes was returned on 23-01-2003. The customer of SB a/c 10665, Shri. Sriivasan remitted an amount of Rs.7,500/- on 06-01-2003 at SWC-2 for crediting the same to his said SB a/c 10665. Though the cash was acknowledged by Sri E.Srisailam, in violation of the instructions contained in H.0. Circular 32/2001, without making necessary entries in the system, he has misappropriated the cash remitted by Shri. A.Srinivasan. On account of non-crediting of the said amount, a cheque bearing No.121081 dated 7.2.2003 for Rs.7,494/- issued by Shri. A.Srinivasan in favour of M/s Maruti Countrywide was returned for insufficient balance. iv) Shri. V.Venkatanarayana, holder of SB a/c 12929, remitted an amount of Rs.6,500/- at SWC-2. Though Sri E.Srisailam acknowledged the cash on the counterfoil, he failed to make necessary entries in the system and misappropriated the said cash. On account of non-crediting of the cash remitted by Shri. Venkatanarayana on 28.1.2003, a cheque bearing No.130171 dated 23.1.2003 issued by him for Rs.6,288/- in favour of BSNL was returned for the reason insufficient balance", which resulted in disconnection of his STD line and also entailed payment of penalty. M/s. Kranti Book Centre, who are maintaining OD a/c 3/01 remitted Rs.15,000/- on 10.10.2002 and Rs.20,200/- on 17.1.2003 at SWC-2 for crediting the same to their OD account 3/01. By mis-utilising the position as in-charge of SWC-2, Sri E.Srisailam failed to enter the cash remitted by the party in the system and misappropriated the same. vi) Sri. V. Rathnakar, who is maintaining SB A/c 11349 remitted an amount of Rs.2,540/- on 25.1.2003 at Swc-2. Though Sri E.Srisailam acknowledged the cash on the Counterfoil, he failed to feed the same into the system and misappropriated the same without crediting to customer's account. (vii) Sri Kondal Reddy holder of SB A/C 13513, remitted an amount of Rs.7,500/- on 04-01-2003 at the SWC-2 manned by Sri. Srisailam for crediting the same to his SB A/c. Though he acknowledged the cash, he failed to feed the same into the system and misappropriated the same without crediting to Customer's account. (vii) In violation of instructions contained in H.O Circular 122/87 dated 26.6.1987 and codified Circular 46/93 dated 6.4.1993, Sri E.Srisailam issued the 9 cheques without maintaining sufficient balance in his SB A/c 50193. (ix) On 07-08-2002 and 08-08-2002, Sri E.Srisailam unauthorized and without the consent of concerned officer removed two cheque books of 25 leaves each bearing Nos. 120601 to 120625 and 120726 to 120750. It is evident from the above that the petitioner indulged in activities which are contrary to the conduct required to be adhered by a bank employee. Therefore the petitioner's contention that he has not violated any of the Circulars i.e. HOC-32/2001, 122/87 and 46/93 is without any merit and justification. As evident from the above, despite having more than two months time, the petitioner failed to submit his statement of defence to the afore-mentioned charge sheet. Therefore his contention that his representation for time to submit his statement of defence was not accepted is erroneous. Further it is evident from records that the petitioner never made any representation seeking time from the bank to submit his statement of defence. Further the petitioner's contention that instead of granting time, enquiry was held ex-parte is also contrary to the facts of the case. Enquiry was adjourned twice on the representation of the petitioner and it was finally held on 3.9.2003. It is pertinent to note that the enquiry officer and presenting officer waited till 12-05 PM on the said date. In absence of any intimation/information from the petitioner, before proceeding with enquiry and the enquiry Officer concluded the enquiry. Therefore the petitioner's contention that he has been prejudiced by the ex-parte enquiry is without any justification and merit. Further his illness and medical certificates have got no bearing and connection with the irregularities/frauds committed by him. Further the petitioner's contention that he did not have the opportunity to cross-examine the witness is self contradictory. When the petitioner did not chose to participate in the departmental enquiry, then how can he cross-examine the witness. Further the petitioner's contention that he was not provided with documents marked as exhibits are also untrue as the same was also provided to him annexed along with the enquiry findings, which were duly received by the petitioner, as these incidents were given due credence at appropriate instances acknowledged by the petitioner on 27.9.2003. Hence the punishment imposed on the petitioner is commensurate to the gravity off the misconduct committed by the petitioner. The Respondent Bank submits that in view of the above facts and circumstances and legal position, it is submitted that the application filed by the applicant is not maintainable and therefore the same is liable to be dismissed.

4. Heard. Both the parties have filed written submissions.

5. In view of the pleadings of the parties and arguments advanced by both parties, the following parties merge for determination in this case:

I. Whether the action of the Respondent Management in imposing the punishment of removal from the services of the Bank with immediate effect upon the Petitioner Sri E. Srisailam, vide proceedings dated 12.1.2004, which was also confirmed by Respondent vide order dated 26.9.2005, is legal and justified?

II. Whether punishment of removal from service inflicted upon Petitioner is shockingly disproportionate and unjust?

III. To what relief the Petitioner is entitled?

Finding:

6. Points No.I , II & III: The perusal of the record goes to reveal that in the present matter the departmental enquiry was conducted by the Respondent against the Petitioner and Petitioner was found guilty of charges and punishment of removal from service with immediate effect was has been imposed upon the Petitioner by the Respondent. The legality and validity of the departmental enquiry has been held legal and valid vide order dated 20.5.2013 by the Court. Since the Petitioner did not challenge the order regarding the validity of the domestic enquiry in any higher forum, the said order has become final against him.

7. Petitioner submitted that he joined the Respondent bank on 21.1.1994 as a Sub-staff at Bank Street Branch, Koti, Hyderabad and he worked in various branches, subsequently he was promoted as a Clerk at Errakunta Branch Khammam District. He was transferred to Malakpet Branch, Hyderabad. Since the date of his appointment, petitioner is discharging his duties to the entire satisfaction of his superiors. It is also submitted that while so he was discharging his duties as Clerk, the respondents bank has issued charge sheet dated 30.5.2003 alleging that the petitioner has misappropriated the amounts for the period from 29.6.2002 to 13.12.2002. The Petitioner requested the Respondent Management for submitting detailed explanation to the charge sheet, instead of granting time and waiting for the explanation to the charge sheet, the respondent bank ordered a departmental enquiry into the alleged charges. In the enquiry petitioner could not participate since he was suffering from ill health, and same was informed to the respondent bank. Instead of granting time in the enquiry, the enquiry officer concluded the enquiry as an ex-parte enquiry It is further submitted medical reports to the respondent bank and those certificates were not considered by the disciplinary authority as well as enquiry officer. The respondent bank obtained the petitioner statement under threat and coercion. It is submitted that without considering the representations submitted by the petitioner for the postponement of enquiry proceedings, instead of considering the same the enquiry officer has concluded ex-parte enquiry. In the enquiry the Respondent/Management bank has examined the witnesses and those witnesses were not cross examined by the petitioner. The enquiry officer has not given reasonable opportunity to defend his case. The action on part of the enquiry officer in giving findings that the charges held proved against the petitioner is wholly illegal, arbitrary and in violation of Principles of natural justice. It is further submitted that he informed to the higher officials of the Respondent bank and immediately after recovery, Petitioner made representation dated 12.9.2003 wherein he stated that if the Disciplinary Authority permit him to attend the enquiry he is ready to attend the enquiry. Inspite of receiving the same the Respondent bank has not taken any steps. It is also submitted that subsequent to that, Petitioner made representation to the Respondent bank with a request to conduct denovo enquiry. It is also submitted that based on the exparte enquiry and perverse findings of the Enquiry Officer the Disciplinary Authority has issued show cause notice of removal from service vide order dated 18.12.2003. Before issuance of said show cause notice of removal the Disciplinary Authority has not given reasonable opportunity to defend his case. There is no evidence before the Enquiry Officer as well as Disciplinary Authority that Petitioner has committed irregularities as alleged in the charge sheet dated 30.5.2003. After receipt of show cause notice petitioner submitted detailed explanation denying charges leveled against him, and also denied various allegations made in the show cause notice, and requested the authority to drop all further proceedings in the matter. Without considering the facts and circumstances of the case the disciplinary authority has passed removal order removing the Petitioner from service dated 12.1.2004. The punishment of removal from service is shockingly disproportionate and unjust. There is no evidence before the Enquiry Officer as well as Disciplinary Authority that Petitioner has committed irregularities as alleged in the charge sheet. The irregularities referred to in the Charge Sheet dated 30.5.2003 were not established either on record or on the basis of the evidence adduced before the enquiry officer. The evidence available before the enquiry clearly shows that the Petitioner was not guilty of the allegations and the allegations were not proved. Thus, the disciplinary authority ought to have dropped the punishment of removal from service. The Appellate Authority without assigning any reasons rejected the appeal vide proceedings dated 26.9.2005 in a mechanical manner and no valid reasons are assigned in the rejection order. Thus, the Disciplinary Authority and Appellate Authority ought to have seen that there is no misappropriation of bank funds nor any loss caused to the Respondent bank. The Disciplinary Authority and Appellate Authority failed to see that the punishment of removal from service is grossly disproportionate to the gravity of charges levelled against the Petitioner. The Disciplinary Authority and Appellate

Authority failed to see past service record of the Petitioner, Petitioner worked in the Respondent bank since 21.1.1984 to till date of his removal i.e., 12.2.2004. It is also submitted that since from the date of dismissal from service vide order dated 14.2.2004, the Petitioner is facing severe financial difficulties, he is also earning member in his family. His entire family is dependent on his salary. Therefore, prayed for setting aside the punishment order dated 14.2.2004 and Appellate Authority rejection order dated 26.9.2005 and consequently direct the Respondents bank to reinstate the Petitioner into service with all consequential benefits, otherwise the Petitioner will be put into serious and irreparable loss. Petitioner has placed reliance on the judgement passed by **Hon'ble High Court at Hyderabad, in the matter of WP No.16288/2004 dated 29.4.2016 reported in 2016(5) ALD 497, wherein it was held,**

"38.4 The cases in which the Labour Court/Industrial Tribunal exercises Under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages."

8. On the other hand, the Respondent has submitted that the enquiry against the Petitioner was conducted by following the principles of natural justice and procedure. It is also submitted that Petitioner reportedly hospitalized for his feigned sickness at Hyderabad and it is well within his knowledge that the re-scheduled Departmental enquiry shall commence on 3.9.2003, the Petitioner neither made any attempt to contact the Enquiry Officer on that particular day nor sent any written message along with a medical certificate from the competent doctor stating the genuine medical reason for his inability to attend the departmental enquiry. The admission card purported to have been issued by M/s. A.P. Vaidya Parishad, King Koti, Hyderabad on 1.9.2003 as well as 5.9.2003 clearly established that he was not at all suffering from any chronic diseases that prevented him attending the departmental enquiry. As per the said admission card purported to have been issued by M/s. A.p. Vaidya Parishad, the Petitioner was treated as an outpatient vide reference No.28278. It is obvious that the Petitioner was not incapacitated by any serious ailment which would have prevented him from participating in the departmental enquiry or seeking any further adjournment. In view of the foregoing, the Petitioner has no ground at all to say that the ex-parte departmental enquiry was conducted back door and he was not provided any opportunity to defend himself. It is evident from record that the Petitioner was provided with a copy of the report of the findings of the departmental enquiry vide Disciplinary Authority's letter dated 23.10.2003 with a direction to submit his representation if any, on the findings of the enquiry, within 7 days of receipt of the same. Further documents marked as Management exhibits were also made available to the Petitioner to file his reply to the same and the same were received by the Petitioner. It is also submitted that Petitioner's contention that Disciplinary Authority ought to have dropped the charges against him and the Disciplinary Authority acted only on the basis of records and documents available to him and on the basis of enquiry finds as well as connected documents and records, the punishment is apt and justified.

9. The reliance has been placed upon the decision of **Hon'ble Apex Court in United Commercial ban & Ors. Vs. P.C. Kakkar, AIR 2003 SC 1571 wherein Apex Court held:**

"A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank."

10. Further in the case of **Damoh Panna Sagar Rural Regional Bank and another reported in Air 2005 SC 584, the Hon'ble Apex Court held**, *" the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. Unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference." …. "In the instant case, services of the bank employee of Regional Rural Bank were terminated on ground that he had unauthorisedly withdrawn amount from bank."*

11. Therefore, in view of law laid down by Apex Court it is submitted by the Respondent that, the punishment of removal from service has been imposed on the Petitioner which is commensurate to the gravity of misconduct committed by the Petitioner. It is also submitted that a bare perusal of Appellate Authority's order (Annexure-X) will show that it is a reasoned order and not a mechanical order as claimed by the Petitioner. Respondent submitted that Petitioner herein raised the dispute after lapse of 4 years after his termination from service. Therefore, petition is unsustainable on the ground of delay and latches.

12. On the basis of submissions made by both the parties, perused the record.

13. In the present matter, perusal of record goes to reveal that the validity of domestic enquiry has already been held legal and fair. Further, it is explicit from the record, that Petitioner was given sufficient opportunity of

hearing at every stage of the proceeding of which he did not avail due to the reasons best known to him. Enquiry Officer served a registered post acknowledgement due notice upon Petitioner on 2.7.2003informing enquiry will be held on 6.8.2003. As the charge sheeted employee failed to attend the scheduled domestic enquiry on 6.8.2003 feined sickness Departmental enquiry adjourned to 14.8.2003 and charge sheeted employee was informed accordingly through notice vide registered post. CSE again failed to attend enquiry, it was adjourned to 3.9.2003 and CSE was informed accordingly. But, on scheduled date i.e., on 3.9.2003 CSE did not turn up, although CSE was very much present at Hyderabad. Under such circumstances, Enquiry Officer has left with no option but to conduct Departmental enquiry ex-parte and it got concluded on 4.9.2003. Further it is also submitted that documents of departmental enquiry proceeding and copies of documents presented was served upon Petitioner on 27.9.2003 and despite allowing time, he failed to submit his written brief to the Enquiry Officer. Further, enquiry proceeding manifests that Enquiry Officer appreciated evidence and submitted his report holding the Appellant guilty of the charge. Enquiry Officer has proposed the punishment of removal of the Petitioner from the service. Keeping in view the gravity and seriousness of charges, no case is made out to hold Petitioner was not provided sufficient opportunity of hearing. Petitioner by not filing reply in enquiry against the charge levelled against him despite notice of date of hearing has foregone his right to reply. Now, he cannot be permitted to raise the issue that the enquiry has been conducted by Respondent ex-parte against him. As far as plea taken by Petitioner in his petition regarding his absence due to illness is considered, he has filed document in support of his plea. The document goes to show that on 5.9.2003 he was examined as outpatient in hospital. It does not reveal that he was unable to attend enquiry or to submit reply on the date of hearing / enquiry i.e., 3.9.2003. Further, Petitioner addressed a letter dated 12.9.2003 to Enquiry Officer, for permission to attend enquiry, but by that time enquiry was concluded. Petitioner has not submitted any cogent reliable evidence that he was suffering from such sickness that made him unable to attend the enquiry on the date of hearing. Thus, the plea taken by Petitioner of illness not acceptable.

14. In this regard, **Hon'ble Apex Court in the case of State of U.P. Vs.T.P. Lal Srivastava dated 20.9.1996 have held,** *"The admitted position is that while the Respondent was working as a Senior Marketing Inspector, a charge sheet was served on him on November 23, 1984 calling upon him to explain the charges for committing gross irregularities in the movement of wheat outside the State of U.P. Instead of submitting reply to the charge sheet, he went on dilly-dallying in submitting the reply. Several letters addressed to the Respondent proved ineffective. Resultantly, the Appellants took a decision on June 26, 1987 holding that the Respondent was found guilty of misappropriation. Consequently, he came to be dismissed from service."*

15. **Hon'ble Apex Court in the case of M.L. Singla Vs.Punjab National Bank in Civil Appeal No.1841 of 2010 dated 28.9.2018, wherein Hon'ble Apex Court held:-**

"once it is held that domestic inquiry is legal and proper the next question which arises for consideration is as to whether the punishment imposed on petitioner is just and legal or it is disproportionate to the gravity of the charges."

Therefore, in view of the law laid down by the apex Court the contention of Petitioner regarding validity of enquiry is not acceptable.

16. Regarding imposition of the punishment Petitioner submitted that Disciplinary Authority and Appellate Authority ought to have seen that there is no misappropriation by the Petitioner or any loss caused to bank, the Disciplinary Authority and Appellate Authority failed to see that punishment of removal from service is grossly disproportionate to the gravity of charges.

17. So far as, Charge No.I is concerned, the charge sheeted employee/ Petitioner misappropriated and credited the amount of Rs. 70,140/- remitted by 7 different customers detailed in preamble which is in violation of contents in H.O. Circular No.32/2001 dated 23.2.2001 which was prejudiced in the interest of the bank and the same was prosecuted as gross misconduct. The misconduct of misappropriation of the amount of customers of Rs.70,140/- which was remitted by them in their accounts is a serious misconduct which involve loss of confidence as well as trust of customers regarding banking organization. Therefore, this misconduct can be termed as a serious misconduct. Thus, Petitioner misappropriated the amount of the customers who have deposited in their accounts and further he removed the cheque books of 25 leaves bearing No.120621 to 120625 without any authority from custody of concerned officer. Further, he issued nine cheques without maintaining sufficient balance in the account. All the above stated misconducts committed by Petitioner are of grave and serious nature and the Disciplinary Authority rightly imposed the punishment of removal upon the Petitioner form service because the Management has lost confidence in him. Under these circumstances, the punishment of removal from service imposed upon the Petitioner cannot be said shockingly disproportionate.

18. **Hon'ble Apex Court in the case of Coal India Ltd vs Mukul Kumar Chaudhary, Civil Appeal No. 5762-5763, date of decision 24th August, 2001, has laid down the test for deciding proportionality of the punishment imposed and held that**:

"One of the test to be applied while dealing with the question of quantum of punishment would be:- Would any reasonable employer have imposed such a punishment in such circumstances? Obviously, a reasonable employer is expected to take into consideration measures, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before punishment."

19. Further in the case of **Janatha Bazar Vs. Secretary, Sahaari Noukarara Sangha ect. 2000 LLR page 1271 the Apex Court held:** *"Once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating employee in service-Labour Court cannot substitute penalty imposed by employer in such cases." It is also held that, "in view of the proof of misconduct a necessary consequence will be that Management has lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11A of the I.D. Act to grant relief with minor penalty."*

As regards, the punishment imposed upon the Petitioner, it is not disputed that all the charges were held proved in departmental enquiry against the Petitioner and one cannot be possibly argue that charges were simple in nature. In other words, all the three charges were of serious nature.

20. Therefore, in view of the discussion in fore gone paragraphs, all the charges proved against the delinquent Petitioner being serious in nature. Therefore, the order of dismissal passed against the Petitioner cannot be faulted with nor can be said to be in any way disproportionate to the gravity of the charges. In other words, the punishment of the dismissal of the Petitioner was proportionate with the gravity of the charges and hence, deserves to be upheld. Therefore, in view of the above, Petitioner is not entitled to any relief.

Thus, all the Points No.I, ,II & III are answered accordingly.

ORDER

The action of the Respondent Management in imposing the punishment of compulsory retirement to the Petitioner Sri E. Srisailam, vide proceedings dated 12.1.2004, which was also confirmed by Respondent vide order dated 26.9.2005, is held legal and justified. As such, the Petitioner is not entitled to any relief as prayed for. Hence, petition dismissed.

Award is passed accordingly. Transmit.

Dictate to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 4th day of May, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 30 जून, 2023

का.आ. 1142.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अमेरिकन एक्सप्रेस बैंक लिमिटेड के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 1 दिल्ली के पंचाट (57/2022) प्रकाशित करती है।

[सं. एल-12011/05/2022-आईआर(बी-I)]

सलोनी, उप निदेशक

New Delhi, the 30th June, 2023

S.O. 1142.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 57/2022) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No.1 Delhi as shown in the Annexure, in the industrial dispute between the management of M/s American Express Bank Ltd and their workmen.

[No. L-12011/05/2022- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM -LABOUR COURT DELHI – 1, ROOM No. 207, ROUSE AVENUE COURT COMPLEX, NEW DELHI.

Present : Justice VIKAS KUNVAR SRIVASTAVA (Retd.) Presiding officer CGIT, Delhi-1

ID No. 57/2022

The President,
Oil Field Employees Association,
B-506, Sai Vihar, Sector-15,
CBD Belapur, Navi Mumbai – 400614. ….Claimant

Versus

1. M/s American Express Bank Ltd.
& Standard Chartard (PLC)
C-38/39, G Block, Crescenzo Building,
Bandra Kurla Complex, Bandra East,
Mumbai – 400 051.

2. The CEO,
American Express Banking Corp.
Cyber City, Town C DLR, Building No.8,
DLF City Phase-II, Sector-25,
Gurgaon (Haryana) – 122 022. ….Management

None for the claimant
Shri Rahul Gaur, A/R for the management

AWARD

In the present case, a reference was received from the appropriate Government vide letter No.12011/05/2022-IR(B-I) dated 09.02.2022 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"Whether the demand of American Express Bank Employees Union, against the management of American Express Bank Ltd., now known as Standard Chartered (PLC) for Dearness Allowance along with pension by the workmen is justified, fair and legal ? If yes, what relief the workmen are entitled to ?"

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 25.05.2023

नई दिल्ली, 30 जून, 2023

का.आ. 1143.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रबंध निदेशक, इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड, मनकापुर, गोंडा; निदेशक, इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड, मनकापुर, गोंडा; महाप्रबंधक उत्पादन, इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड मनकापुर, गोंडा; अपर महाप्रबंधक, (व्यक्तिगत एवं प्रशासन) इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड, मनकापुर, गोंडा, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री राम प्रह्लाद, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 09/2013) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26/06/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-142-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th June, 2023

S.O. 1143.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 09/2013) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director, Indian Telephone Industries Ltd, Mankapur, Gonda ; The Director, Indian Telephone Industries Ltd., Mankapur, Gonda ;The General Manager Production, Indian Telephone Industries Ltd. Mankapur, Gonda; The Additional General Manager, (Personal & Administration) Indian Telephone Industries Ltd , Mankapur, Gonda, and Shri Ram Prahlad, Worker, which was received along with soft copy of the award by the Central Government on 26/06/2023.

[No. L-42025-07-2023-142-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

I.D. No. 09/2013

Ram Prahlad, aged about 47 years, s/o late Ram Prasad, R/o Village,-
Maanpur, Post Office- Karohan man, Police Station- Mankapur,
District-Gonda (Casual Labour No.707). ….Workman

Versus

1. Indian Telephone Industries Ltd., Mankapur, District Gonda, through its Managing Director.
2. The Director, Indian Telephone Industries Ltd., Mankapur District-Gonda.
3. General Manager Production, Indian Telephone Industries Ltd. Mankapur, District-Gonda
4. Additional General Manager, (Personal & Administration) Indian Telephone Industries Ltd.,
Mankapur, District-Gonda. ….Respondent

On 30.11.2012 Appellant Ram Prahlad has filed the present I.D. Case No. 09/2013.

Facts of the case.

Facts in brief as pleaded by appellant in his clam petition are under that on 20.01.1988 he was appointed on the post of Apprentice Electrician & Electrician on the stipped Rs. 300/- per months in the C.M.B-M.P. department of Indian Telephone Industries Ltd. Mankapur District Gonda (hereinafter referred as I.T.I.).

By an order dated 11.02.1991 his service was retrenchment/terminated.

Aggrieved by order dated 11.02.1991 by which his services were terminated. He along with other co-worker filed writ petition No. 4191(S/S) of 1991 B.L. Shukla and Others Versus I.T.I. Mankapur District Gonda, dismissed by an order dated 27.11.2010, reads as under:-

The case of the petitioner is that they have completed more than 240 days with the opposite parties and their services have been retrenched illegally.

Sri V.R. Singh appearing for the opposite parties has drawn the attending of the court towards the judgment of Hon'ble Supreme Court in the case of ONGC LTD AND Another Vs. Shyamal Chandra BHOWVIK reported in (2006) Supreme Court Case 337. In paragraph 12 of this judgment their Lordship have held.

"The High Court should not entertain writ petition directly when claim of service of more than 240 days in a year is raised whether a person has worked more than 240 days or not is a disputed question of facts which is not to be examined by the High Court. Proper remedy for the person making such a claim is to raise an industrial dispute under the Act so that the evidence can be analyzed and conclusion can be arrived at."

This Court feels that the writ petition is not maintainable.

The counsel for the petitioner says that it is very harsh upon the petitioners that the petition is being dismissed on this ground while it was earlier entertained by this Court Sri. V.R. Singh points that this was a conditional order and therefore, since the work was not available it has not been complied with.

Law is dynamic and keeps changing with the changing circumstances and values of the society. The order of Hon'ble Supreme Court is always binding on the High Courts, as such when the petition was filed it was entertained because the view was earlier different. Now with the progress this court is bound by their citation given by Sri V.R. Singh.

The petitioners may approach the Labour Court if they so choose as directed by Hon'ble the Supreme Court".

Aggrieved by order dated 27.10.2010 workman filed, special appeal No. 535/ 2011 Chandrika Prasad & others before the Hon'ble High Court Lucknow disposed of by an order dated 27.07.2011, reads as under:-

"Heard learned counsel for parties and perused the pleadings of writ petition.

Learned Counsel for appellants makes a limited prayer for grant of liberty in terms of order dated 03.12.2010, passed in Special Appeal No. 83; of 2010 (Ram Baran and another Versus Indian Telephone Industries Ltd. and others), In similar circumstances with liberty to approach this Labour Court. The relevant portion of order containing the liberty reads as under:-

"We therefore, dismiss the special appeal, but give liberty to the appellants to approach the Labour Court, in case of appellants approach the Labour Court by following the process of law within a period of two months from today, the Labour Court shall decide the claim of the appellants without any period of six months thereafter."

Thus, we dispose of this Special Appeal with limited indulgence while granting liberty in terms of the aforesaid order passed in Special Appeal No. 837/2010.

Special Appeal is, thus, disposed of".

In view of the above said fact of factual background the present claim petition filed before this Tribunal under section 2-A(1) r/w section 2-A(2) of the Industrial Dispute Act.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 30.11.2012 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 26.01.1991 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

In support of his argument above said plea he submits that admittedly as per the case of the claimant his services were terminated on 11.02.1991 aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

On behalf of appellant, it is submitted that in the present case, the services were retrenched/terminated by an order dated 11.02.1991 in contravention to the provisions as provided under section 25(F) of the Act, challenged by him by filling of writ petition No. 4191 (S/S) of 1991 which was dismissed by an order dated 27.10.2010 thereafter he filed a special appeal which was disposed of.

By an order dated 27.07.2011 and in pursuance to direction given in the special appeal by the Hon'ble High Court. The present claim petition has been filed under section 2-A(1) r/w section 2-A(2) of the Act, so the preliminary objection taken by the respondent is liable to be rejected and the case may be heard and decided on merit.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A. D. Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 11.02.1991, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 30.11.2012 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that

there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, it is not in dispute that the service of the workman was terminated on 11.02.1991, challenged by him by filing the present industrial dispute on 30.11.2012.

So, keeping in view the above said facts as well as that the workman cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 11.02.1991 and filed the present case on 30.11.2012 u/s 2-A (2) of the Act, as such the claim petition is barred by the period of limitation provide under section 2-A(3) of the Act liable to rejected.

So far the argument advanced on behalf of learned counsel for claimant that he has filed the present case in pursuance to the order passed by Hon'ble High Court in special appeal NO. 535/2011 is conceived and incorrect because in the special appeal by order dated 27.07.2011 the Hon'ble High Court has directed appellant shall approach the Labour Court by filling of his claim with liberty given to the appellant to approach the Labour Court by following in case the appellant shall approach the Labour court within two month from today , however the present I.D. case has been filed by appellant on 30.11.2012 i.e. beyond the period which is provided by Hon'ble High Court by order dated 27.07.2011 in special appeal i.e. two months for approaching this Tribunal.

So appellant cannot derive any benefit from the direction given by the Hon'ble High Court in the special appeal rather he has not followed the said direction is order to file the present case before this Tribunal.

For the foregoing reasons filed by workman/claimant is dismissed as barred by period of limitation under section 2-A(3) of the Industrial Dispute Act 1947, with liberty to the claimant/workman to pursue its case before appropriate forum as per law.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 जून, 2023

का.आ. 1144.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अध्यक्ष-सह-प्रबंध निदेशक, मेसर्स स्कूटर इंडिया लिमिटेड, सरोजिनी नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री वी.डी. झा, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ पंचाट के (संदर्भ सं. 89/2021) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26/06/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-135-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th June, 2023

S.O. 1144.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 89/2021) of the Central Government Industrial Tribunal cum

Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chairman-cum Managing Director, M/s Scooter India Limited, Sarojini Nagar, Lucknow, and Shri V.D. Jha, Worker, which was received along with soft copy of the award by the Central Government on 26/06/2023.

[No. L-42025-07-2023-135-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE HON'BLE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM -LABOUR COURT, LUCKNOW

I.D. Case No. 89/2021

V.D. Jha, aged about 67 years son of late Sri Chandra Sen Jha,
resident of –Hanuman Puri Amausi Station Road,
Sarojini Nagar Post- Sarojini Nagar, Lucknow Pin-226008 ….Applicant/ Workman

Versus

M/s Scooter India Limited, Sarojini Nagar,
Lucknow through its Chairman-cum Managing Director, ….Opp. Party/Employer

Facts in Brief:

In the city of Lucknow, there is a establishing known as M/s Scooter India Limited Lucknow (hereinafter referred as establishment).

On 31.12.2020 appellant moved an application under section 2-A(1) read with section 2-A(2) of the Industrial Dispute Act (hereinafter referred as Act) and the facts as stated by him in the claim petition are as under:-

A. Workman was appointed as unskilled worker in the establishment on 27.12.01976.

B. On 08.12.1998 establishment floated in scheme known as voluntary retirement scheme in pursuance to the same workman submitted an application for voluntary retirement on 25.12.1993 for his voluntary retirement with effect from 14.12.1993.

C. On 06.11.1993 circular was issued by which voluntary retirement scheme issued by establishment by 18.12.1993 was suspended with effect from 01.03.1993 so the workman moved an application for withdraw of his application for voluntary retirement on 25.11.1993, however his application for voluntary retirement was accepted but he was retired from service voluntarily.

In view of the above said background the present claim has been filed with the following relief.

"Wherefore, it is prayed that the illegal Voluntary Retirement of the applicant-workman w.e.f. 25.11.1993 is liable to be set aside and the opposite party/employer may kindly be directed to reinstate applicant-workman on the post with all consequential service/salary benefits and pay with all consequential within stipulated period with 12% interest, and/or pass such other order or direction, which this Hon'ble Tribunal may deem just and proper in the circumstances of the case".

On behalf of the respondent a preliminary objection has taken that the workman so under this as per the provision of section 2-A(2) appellant cannot filed the present claim petition by invoking the provisions of as provided under section 2-A(1) read with section 2-A(2) of the Act aggrieved by the order by which his application for voluntary retirement has accepted as such claim petition filed by appellant is liable to be dismissed on the said ground.

In addition to the above said facts learned counsel for respondent further submits that even otherwise application filed by appellant under section 2-A(2) of the Act is not maintainable as in the present application workman/appellant has challenged his voluntary retirement dated 25.11.1993, on 31.12.2020 by filing the present claim petition so the same is barred by the period of limitation as provided u/s 2-A(3) of the Act, so liable to be dismissed on the said ground also.

In rebuttal it is submitted on behalf of the appellant as under:-

Management is well know that the Voluntary Retirement Scheme, circulated vide letter dated 08.12.1988, will remain suspended w.e.f. 01.12.1993 (Ref.- Annexure No. 2 to this written statement).

Applicant-workman gave the Voluntary retirement on 25.11.1993 which was withdrawn by applicant workman himself on dated 27.11.1993 even before it was approved by company itself.

It is provided in the Standing Orders of the company that the pay will be revised on each 5(Five) years of the employees/workman, which has not been done in the matter of the applicant-workman before accepting his illegal voluntary retirement.

Company/respondent is quietly running till date, therefore, his illegal voluntary retirement deserves to be quashed and opposite party/employer is liable to be directed to reinstate applicant-workman on the post with full salary benefits from relieve till his date of retirement from the post/job and pay his entire due salary with 12% interest to the applicant/workman.

Accordingly it is submitted that present case may be decided on merit should not be dismissed on the objection taken on behalf of respondent.

I have heard learned counsel for the parties and have gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery.

The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

From the bare reading of provision of section 2-A(1) read with section 2-A(2) of the Act, the position is emerged out that individual workman can approach this Tribunal aggrieved by the action of employer by which the services of workman was discharged/dismissed retrenchment or otherwise terminated but not against an order by which his application for voluntary retirement has been accepted, accordingly he was retired.

So the present claim petition filed by him challenging his voluntary retirement w.e.f. 25.11.1993, is not maintainable u/s 2-A(1) read with Section 2-A(2) of the Act, because the Hon'ble Supreme Court held as under:-

> *"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided"*.

Another question to be considered is that in view of the facts which are stated hereinabove, whether the claim petition filed by workman on 31.12.2020, before this Tribunal u/s 2-A (2) of the Act challenging order of voluntary retirement dated 25.11.1993 is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question finds place in the judgment passed by the Hon'ble Karnataka High court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041*** *wherein it has been held as under* relevant potion quoted:

> *"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.*
>
> *20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:*
>
> > *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*
>
> *21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."*

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

> *"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.*
>
> *8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.*
>
> *The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.*
>
> *9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.*
>
> *10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."*

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

> *"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-*
>
> > *(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)*
> >
> > *(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)*
> >
> > *(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)*
> >
> > *(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)*
>
> *5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."*

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

> *"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".*

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> *25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".*

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> *"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."*

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> *"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."*

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

> *"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the*

period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Taking into consideration the above said facts as well as admitted fact that appellant for voluntary retirement from service with effect from 25.11.1993, accepted the amount paid to him in lieu of voluntary retirement, the claim petition filed by him the same is liable to be dismissed.

For the foregoing reasons the claim petition is dismissed as not maintainable under section 2-A(3) of the Industrial Dispute Act 1947.

As prayed on behalf of appellant, it will be open to him to approach the appropriate forum/court for redressal of the grievances as raised in the present case.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 जून, 2023

का.आ. 1145.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अध्यक्ष-सह-प्रबंध निदेशक, मेसर्स स्कूटर इंडिया लिमिटेड, सरोजिनी नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री देवी शरण, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 88/2021) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26/06/2023 को प्राप्त हुआ था।

[सं. एल-42025/07/2023/136-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th June, 2023

S.O. 1145.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 88/2021) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chairman-cum Managing Director, M/s Scooter India Limited, Sarojini Nagar, Lucknow, and Shri Devi Sharan, Worker, which was received along with soft copy of the award by the Central Government on 26/06/2023.

[No. L-42025/07/2023/136-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE HON'BLE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, LUCKNOW

I.D. Case No. 88/2021

Devi Sharan aged about 65 years son of late Sri Satya Narayan
resident of –H.No.-54 Chandra Shekhar Azad Nagar
Colony Daroga Khera Kanpur Road,
Post Aaurawan Sarojini Nagar Lucknow Pin-227101 ….Applicant/ Workman

Versus

M/s Scooter India Limited, Sarojini Nagar,
Lucknow through its Chairman-cum Managing Director, …Opp. Party/Employer

Facts in Brief:

In the city of Lucknow, there is a establishing known as M/s Scooter India Limited Lucknow (hereinafter referred as establishment).

On 31.12.2020 appellant moved an application under section 2-A(1) read with section 2-A(2) of the Industrial Dispute Act (hereinafter referred as Act) and the facts as stated by him in the claim petition are as under:-

A. Workman was appointed as unskilled worker in the establishment on 27.12.01976.

B. On 08.12.1998 establishment floated in scheme known as voluntary retirement scheme in pursuance to the same workman submitted an application for voluntary retirement on 25.12.1993 for his voluntary retirement with effect from 14.12.1993.

C. On 06.11.1993 circular was issued by which voluntary retirement scheme issued by establishment by 18.12.1993 was suspended with effect from 01.03.1993 so the workman moved an application for withdraw of his application for voluntary retirement on 25.11.1993, however his application for voluntary retirement was accepted but he was retired from service voluntarily.

In view of the above said background the present claim has been filed with the following relief.

"Wherefore, it is prayed that the illegal Voluntary Retirement of the applicant-workman w.e.f. 25.11.1993 is liable to be set aside and the opposite party/employer may kindly be directed to reinstate applicant-workman on the post with all consequential service/salary benefits and pay with all consequential within stipulated period with 12% interest, and/or pass such other order or direction, which this Hon'ble Tribunal may deem just and proper in the circumstances of the case".

On behalf of the respondent a preliminary objection has taken that the workman so under this as per the provision of section 2-A(2) appellant cannot filed the present claim petition by invoking the provisions of as provided under section 2-A(1) read with section 2-A(2) of the Act aggrieved by the order by which his application for voluntary retirement has accepted as such claim petition filed by appellant is liable to be dismissed on the said ground.

In addition to the above said facts learned counsel for respondent further submits that even otherwise application filed by appellant under section 2-A(2) of the Act is not maintainable as in the present application workman/appellant has challenged his voluntary retirement dated 25.11.1993, on 31.12.2020 by filing the present claim petition so the same is barred by the period of limitation as provided u/s 2-A(3) of the Act, so liable to be dismissed on the said ground also.

In rebuttal it is submitted on behalf of the appellant as under:-

Management is well know that the Voluntary Retirement Scheme, circulated vide letter dated 08.12.1988, will remain suspended w.e.f. 01.12.1993 (Ref.- Annexure No. 2 to this written statement).

Applicant-workman gave the Voluntary retirement on 25.11.1993 which was withdrawn by applicant workman himself on dated 27.11.1993 even before it was approved by company itself.

It is provided in the Standing Orders of the company that the pay will be revised on each 5(Five) years of the employees/workman, which has not been done in the matter of the applicant-workman before accepting his illegal voluntary retirement.

Company/respondent is quietly running till date, therefore, his illegal voluntary retirement deserves to be quashed and opposite party/employer is liable to be directed to reinstate applicant-workman on the post with full salary benefits from relieve till his date of retirement from the post/job and pay his entire due salary with 12% interest to the applicant/workman.

Accordingly it is submitted that present case may be decided on merit should not be dismissed on the objection taken on behalf of respondent.

I have heard learned counsel for the parties and have gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any

union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

From the bare reading of provision of section 2-A(1) read with section 2-A(2) of the Act, the position is emerged out that individual workman can approach this Tribunal aggrieved by the action of employer by which the services of workman was discharged/dismissed retrenchment or otherwise terminated but not against an order by which his application for voluntary retirement has been accepted, accordingly he was retired.

So the present claim petition filed by him challenging his voluntary retirement w.e.f. 25.11.1993, is not maintainable u/s 2-A(1) read with Section 2-A(2) of the Act, because the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Another question to be considered is that in view of the facts which are stated hereinabove, whether the claim petition filed by workman on 31.12.2020, before this Tribunal u/s 2-A (2) of the Act challenging order of voluntary retirement dated 25.11.1993 is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question finds place in the judgment passed by the Hon'ble Karnataka High court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041*** *wherein it has been held as under* relevant potion quoted:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not

appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

> *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Taking into consideration the above said facts as well as admitted fact that appellant for voluntary retirement from service with effect from 25.11.1993, accepted the amount paid to him in lieu of voluntary retirement, the claim petition filed by him the same is liable to be dismissed.

For the foregoing reasons the claim petition is dismissed as not maintainable under section 2-A(3) of the Industrial Dispute Act 1947.

As prayed on behalf of appellant, it will be open to him to approach the appropriate forum/court for redressal of the grievances as raised in the present case.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 जून, 2023

का.आ. 1146.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर ; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री गिरधारी लाल, कामगार, के बीच अनुबंध में निर्दिष्ट

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ पंचाट (संदर्भ संख्या 86/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26/06/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-137-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th June, 2023

S.O. 1146.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 86/2011) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited, Lucknow ;M/s Shah Bandhu, through Shri Yogendra Prasad Shah,Sanitation Contractor, Harjendra Nagar, Kanpur ; M/s Group -4 Facilities Service, through Shri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow, and Shri Girdhari Lal, Worker, which was received along with soft copy of the award by the Central Government on 26/06/2023.

[No. L-42025-07-2023-137-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

Present: Justice ANIL KUMAR, Presiding Officer

I.D. No. 86/2011

BETWEEN

Girdhari Lal son of Sri Anganu,
Resident of 631 C/25, near Harihar Nagar Hanuman Temple,
Indira Nagar District Lucknow.

AND

1. Hindustan Aeronautics Limited, Lucknow Division, Lucknow through its General Manager.
2. General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow.
3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah,
   Sanitation Contractor, 504, Viman Nagar, G.T. Road.
   Harjendra Nagar, Kanpur.
4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor,
   Director Personnel,
   1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 28.02.2010 the claimant/workman has field the ID case No. 82/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the

claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

> *"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."*

On behalf the respondent written statement has been filed on 15.05.2012 in which following preliminary objection was taken:

> *"1. That the aforesaid ID Case No.82/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:*
>
> > *2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".*

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri D.K. Gupta, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

> *"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.*
>
> *28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."*

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

> *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words.

No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, as per the admitted position, the services of the workman was terminated on 21.12.2001 and the same has been challenged by him by filing the present industrial dispute on 28.02.2011.

So, keeping in view the above said facts as well as the workman cannot derive any benefit from the facts on which he has approved the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 28.02.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above. Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 जून, 2023

का.आ. 1147.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर ; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री परागी, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 93/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26/06/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-138-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th June, 2023

S.O. 1147.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 93/2011) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited, Lucknow ;M/s Shah Bandhu, through Shri Yogendra Prasad Shah,Sanitation Contractor, Harjendra Nagar, Kanpur ; M/s Group -4 Facilities Service, through Shri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow, and Shri Paragi, Worker, which was received along with soft copy of the award by the Central Government on 26/06/2023.

[No. L-42025-07-2023-138-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

PRESENT: Justice ANIL KUMAR**,** Presiding Officer

I.D. No. 93/2011

BETWEEN

Paragi, son of Jurakhan,
Resident of House No. 631/644, Village Ismailganj,
Post Chinhat, Faizabad Road, District Lucknow

AND

1. Hindustan Aeronautics Limited, Lucknow Division, Lucknow through its General Manager.
2. General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow.
3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah,
   Sanitation Contractor, 504, Viman Nagar, G.T. Road.
   Harjendra Nagar, Kanpur.
4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor,
   Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 28.02.2010 the claimant/workman has field the ID case No. 82/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

> *"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."*

On behalf the respondent written statement has been filed on 15.05.2012 in which following preliminary objection was taken:

"1. That the aforesaid ID Case No.82/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:

2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri D.K. Gupta, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc. (***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No. 24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

> *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"In as much as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of

judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

> *"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided"*.

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

> *"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.*
>
> *25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".*

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

> *"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".*

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

> *"9. It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."*

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

> *"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."*

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

> *"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."*
>
> *(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)*

Reverting to the facts of the present case, as per the admitted position, the services of the workman was terminated on 21.12.2001 and the same has been challenged by him by filing the present industrial dispute on 28.02.2011.

So, keeping in view the above said facts as well as the workman cannot derive any benefit from the facts on which he has approved the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 28.02.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 जून, 2023

का.आ. 1148.—औद्योगिक विवाद अधिनियम को (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर ; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री भोला नाथ, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 88/2011) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26/06/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-139-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th June, 2023

S.O. 1148.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 88/2011) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited, Lucknow; M/s Shah Bandhu, through Shri Yogendra Prasad Shah, Sanitation Contractor, Harjendra Nagar, Kanpur; M/s Group -4 Facilities Service, through Shri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow, and Shri Bhola Nath, Worker, which was received along with soft copy of the award by the Central Government on 26/06/2023.

[No. L-42025-07-2023-139-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

Present: Justice ANIL KUMAR, Presiding Officer

I.D. No. 88/2011

BETWEEN

Bhola Nath, son of late Ram Asrey,
Resident of 631/286, Ismailganj,
Post Chinhat, Faizabad Road, District Lucknow

AND

1. Hindustan Aeronautics Limited, Lucknow Division, Lucknow through its General Manager.
2. General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow.
3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah,
   Sanitation Contractor, 504, Viman Nagar, G.T. Road.
   Harjendra Nagar, Kanpur.
4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 28.02.2010 the claimant/workman has field the ID case No. 82/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is

neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."

On behalf the respondent written statement has been filed on 15.05.2012 in which following preliminary objection was taken:

"1. That the aforesaid ID Case No.82/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:

2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri D.K. Gupta, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9. It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive

factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, as per the admitted position, the services of the workman was terminated on 21.12.2001 and the same has been challenged by him by filing the present industrial dispute on 28.02.2011.

So, keeping in view the above said facts as well as the workman cannot derive any benefit from the facts on which he has approved the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 28.02.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 जून, 2023

का.आ. 1149.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अध्यक्ष-सह-प्रबंध निदेशक, मेसर्स स्कूटर इंडिया लिमिटेड, सरोजिनी नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री बसंत सिंह, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 90/2021) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26/06/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-134-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th June, 2023

S.O. 1149.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 90/2021) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chairman-cum Managing Director, M/s Scooter India Limited, Sarojini Nagar, Lucknow, and Shri Basant Singh, Worker, which was received along with soft copy of the award by the Central Government on 26/06/2023.

[No. L-42025-07-2023-134-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE HON'BLE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM -LABOUR COURT, LUCKNOW

I.D. Case No. 90/2021

Basant Singh, aged about 57 years son of late
Sri Shiv Baran Singh S.No. 01682 Grade D resident of
Gauri Bazar Post- Sarojani Nagar, Lucknow. ….Applicant/ Workman

Versus

M/s Scooter India Limited, Sarojini Nagar,
Lucknow through its Chairman-cum Managing Director, …Opp. Party/Employer

Facts in Brief:

In the city of Lucknow, there is a establishing known as M/s Scooter India Limited Lucknow (hereinafter referred as establishment).

On 31.12.2020 appellant moved an application under section 2-A(1) read with section 2-A(2) of the Industrial Dispute Act (hereinafter referred as Act) and the facts as stated by him in the claim petition are as under:-

A. Workman was appointed as unskilled worker in the establishment on 27.12.01976.

B. On 08.12.1998 establishment floated in scheme known as voluntary retirement scheme in pursuance to the same workman submitted an application for voluntary retirement on 25.12.1993 for his voluntary retirement with effect from 14.12.1993.

C. On 06.11.1993 circular was issued by which voluntary retirement scheme issued by establishment by 18.12.1993 was suspended with effect from 01.03.1993 so the workman moved an application for withdraw of his application for voluntary retirement on 25.11.1993, however his application for voluntary retirement was accepted but he was retired from service voluntarily.

In view of the above said background the present claim has been filed with the following relief.

"Wherefore, it is prayed that the illegal Voluntary Retirement of the applicant-workman w.e.f. 25.11.1993 is liable to be set aside and the opposite party/employer may kindly be directed to reinstate applicant-workman on the post with all consequential service/salary benefits and pay with all consequential within stipulated period with 12% interest, and/or pass such other order or direction, which this Hon'ble Tribunal may deem just and proper in the circumstances of the case".

On behalf of the respondent a preliminary objection has taken that the workman so under this as per the provision of section 2-A(2) appellant cannot filed the present claim petition by invoking the provisions of as provided under section 2-A(1) read with section 2-A(2) of the Act aggrieved by the order by which his application for voluntary retirement has accepted as such claim petition filed by appellant is liable to be dismissed on the said ground.

In addition to the above said facts learned counsel for respondent further submits that even otherwise application filed by appellant under section 2-A(2) of the Act is not maintainable as in the present application workman/appellant has challenged his voluntary retirement dated 25.11.1993, on 31.12.2020 by filing the present claim petition so the same is barred by the period of limitation as provided u/s 2-A(3) of the Act, so liable to be dismissed on the said ground also.

In rebuttal it is submitted on behalf of the appellant as under:-

Management is well know that the Voluntary Retirement Scheme, circulated vide letter dated 08.12.1988, will remain suspended w.e.f. 01.12.1993 (Ref.- Annexure No. 2 to this written statement).

Applicant-workman gave the Voluntary retirement on 25.11.1993 which was withdrawn by applicant workman himself on dated 27.11.1993 even before it was approved by company itself.

It is provided in the Standing Orders of the company that the pay will be revised on each 5(Five) years of the employees/workman, which has not been done in the matter of the applicant-workman before accepting his illegal voluntary retirement.

Company/respondent is quietly running till date, therefore, his illegal voluntary retirement deserves to be quashed and opposite party/employer is liable to be directed to reinstate applicant-workman on the post with full salary benefits from relieve till his date of retirement from the post/job and pay his entire due salary with 12% interest to the applicant/workman.

Accordingly it is submitted that present case may be decided on merit should not be dismissed on the objection taken on behalf of respondent.

I have heard learned counsel for the parties and have gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc. (***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No. 24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

From the bare reading of provision of section 2-A(1) read with section 2-A(2) of the Act, the position is emerged out that individual workman can approach this Tribunal aggrieved by the action of employer by which the services of workman was discharged/dismissed retrenchment or otherwise terminated but not against an order by which his application for voluntary retirement has been accepted, accordingly he was retired.

So the present claim petition filed by him challenging his voluntary retirement w.e.f. 25.11.1993, is not maintainable u/s 2-A(1) read with Section 2-A(2) of the Act, because the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Another question to be considered is that in view of the facts which are stated hereinabove, whether the claim petition filed by workman on 31.12.2020, before this Tribunal u/s 2-A (2) of the Act challenging order of voluntary retirement dated 25.11.1993 is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question finds place in the judgment passed by the Hon'ble Karnataka High court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041*** *wherein it has been held as under* relevant potion quoted:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal,

retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

> *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

> *"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.*
>
> *8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.*
>
> *The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.*
>
> *9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.*
>
> *10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."*

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9. It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory

Provision is never as evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. Of Calcutta 10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma 11.)

Taking into consideration the above said facts as well as admitted fact that appellant for voluntary retirement from service with effect from 25.11.1993, accepted the amount paid to him in lieu of voluntary retirement, the claim petition filed by him the same is liable to be dismissed.

For the foregoing reasons the claim petition is dismissed as not maintainable under Section 2-A(3) of the Industrial Dispute Act 1947.

As prayed on behalf of appellant, it will be open to him to approach the appropriate forum/court for redressal of the grievance as raised in the present case.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 जून, 2023

का.आ. 1150.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अध्यक्ष-सह-प्रबंध निदेशक, मेसर्स स्कूटर इंडिया लिमिटेड, सरोजिनी नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री एस .एल. वर्मा, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 91/2021) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26/06/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-133-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th June, 2023

S.O. 1150.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 91/2021) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chairman-cum Managing Director, M/s Scooter India Limited, Sarojini Nagar, Lucknow, and Shri S. L. Verma, Worker, which was received along with soft copy of the award by the Central Government on 26/06/2023.

[No. L-42025-07-2023-133-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE HON'BLE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, LUCKNOW

I.D. Case No. 91/2021

S. L. Verma, aged about 66 years son of late Sri Krishan Verma,
resident of-12, Chandra,
Shekhar, Azad Nagar Colony, Daroga Kheda,
Kanpur Road Post Aurawan, Lucknow Pin- 227101 ….Applicant/ Workman

Versus

M/s Scooter India Limited, Sarojini Nagar,
Lucknow through its Chairman-cum Managing Director, …Opp. Party/Employer

Facts in Brief:

In the city of Lucknow, there is a establishing known as M/s Scooter India Limited Lucknow (hereinafter referred as establishment).

On 31.12.2020 appellant moved an application under section 2-A(1) read with section 2-A(2) of the Industrial Dispute Act (hereinafter referred as Act) and the facts as stated by him in the claim petition are as under:-

A. Workman was appointed as unskilled worker in the establishment on 27.12.01976.

B. On 08.12.1998 establishment floated in scheme known as voluntary retirement scheme in pursuance to the same workman submitted an application for voluntary retirement on 25.12.1993 for his voluntary retirement with effect from 14.12.1993.

C. On 06.11.1993 circular was issued by which voluntary retirement scheme issued by establishment by 18.12.1993 was suspended with effect from 01.03.1993 so the workman moved an application for withdraw of his application for voluntary retirement on 25.11.1993, however his application for voluntary retirement was accepted but he was retired from service voluntarily.

In view of the above said background the present claim has been filed with the following relief.

"Wherefore, it is prayed that the illegal Voluntary Retirement of the applicant-workman w.e.f. 25.11.1993 is liable to be set aside and the opposite party/employer may kindly be directed to reinstate applicant-workman on the post with all consequential service/salary benefits and pay with all consequential within stipulated period with 12% interest, and/or pass such other order or direction, which this Hon'ble Tribunal may deem just and proper in the circumstances of the case".

On behalf of the respondent a preliminary objection has taken that the workman so under this as per the provision of section 2-A(2) appellant cannot filed the present claim petition by invoking the provisions of as provided under section 2-A(1) read with section 2-A(2) of the Act aggrieved by the order by which his application for voluntary retirement has accepted as such claim petition filed by appellant is liable to be dismissed on the said ground.

In addition to the above said facts learned counsel for respondent further submits that even otherwise application filed by appellant under section 2-A(2) of the Act is not maintainable as in the present application workman/appellant has challenged his voluntary retirement dated 25.11.1993, on 31.12.2020 by filing the present claim petition so the same is barred by the period of limitation as provided u/s 2-A(3) of the Act, so liable to be dismissed on the said ground also.

In rebuttal it is submitted on behalf of the appellant as under:-

Management is well know that the Voluntary Retirement Scheme, circulated vide letter dated 08.12.1988, will remain suspended w.e.f. 01.12.1993 (Ref.- Annexure No. 2 to this written statement).

Applicant-workman gave the Voluntary retirement on 25.11.1993 which was withdrawn by applicant workman himself on dated 27.11.1993 even before it was approved by company itself.

It is provided in the Standing Orders of the company that the pay will be revised on each 5(Five) years of the employees/workman, which has not been done in the matter of the applicant-workman before accepting his illegal voluntary retirement.

Company/respondent is quietly running till date, therefore, his illegal voluntary retirement deserves to be quashed and opposite party/employer is liable to be directed to reinstate applicant-workman on the post with full salary benefits from relieve till his date of retirement from the post/job and pay his entire due salary with 12% interest to the applicant/workman.

Accordingly it is submitted that present case may be decided on merit should not be dismissed on the objection taken on behalf of respondent.

I have heard learned counsel for the parties and have gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

From the bare reading of provision of section 2-A(1) read with section 2-A(2) of the Act, the position is emerged out that individual workman can approach this Tribunal aggrieved by the action of employer by which the services of workman was discharged/dismissed retrenchment or otherwise terminated but not against an order by which his application for voluntary retirement has been accepted, accordingly he was retired.

So the present claim petition filed by him challenging his voluntary retirement w.e.f. 25.11.1993, is not maintainable u/s 2-A(1) read with Section 2-A(2) of the Act, because the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Another question to be considered is that in view of the facts which are stated hereinabove, whether the claim petition filed by workman on 31.12.2020, before this Tribunal u/s 2-A (2) of the Act challenging order of voluntary retirement dated 25.11.1993 is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question finds place in the judgment passed by the Hon'ble Karnataka High court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041*** *wherein it has been held as under* relevant potion quoted:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in***

Nazir Ahmed Vs. King Emperor AIR 1936 PC 253 and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Taking into consideration the above said facts as well as admitted fact that appellant for voluntary retirement from service with effect from 25.11.1993, accepted the amount paid to him in lieu of voluntary retirement, the claim petition filed by him the same is liable to be dismissed.

For the foregoing reasons the claim petition is dismissed as not maintainable under section 2-A(3) of the Industrial Dispute Act 1947.

As prayed on behalf of appellant, it will be open to him to approach the appropriate forum/court for redressal of the grievances as raised in the present case.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 जून, 2023

का.आ. 1151.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अध्यक्ष-सह-प्रबंध निदेशक, मेसर्स स्कूटर इंडिया लिमिटेड, सरोजिनी नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री विनोद कुमार शर्मा, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 04/2021) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26/06/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-132 -आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th June, 2023

S.O. 1151.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 04/2021) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chairman-cum Managing Director, M/s Scooter India Limited, Sarojini Nagar, Lucknow, and Shri Vinod Kumar Sharma, Worker, which was received along with soft copy of the award by the Central Government on 26/06/2023.

[No. L-42025-07-2023-132-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE HON'BLE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, LUCKNOW

I.D. Case No. 04/2021

Vinod Kumar Sharma, aged about 64 years son of late
Sri Shiv Lal Sharma, resident of-385, C.S.A. Nagar,
Daroga Khera, Post Aauranva, Kanpur Road, Lucknow ….Applicant/ Workman

Versus

M/s Scooter India Limited, Sarojini Nagar,
Lucknow through its Chairman-cum Managing Director, ……Opp. Party/Employer

Facts in Brief:

In the city of Lucknow, there is a establishing known as M/s Scooter India Limited Lucknow (hereinafter referred as establishment).

On 31.12.2020 appellant moved an application under section 2-A(1) read with section 2-A(2) of the Industrial Dispute Act (hereinafter referred as Act) and the facts as stated by him in the claim petition are as under:-

A. Workman was appointed as unskilled worker in the establishment on 27.12.01976.

B. On 08.12.1998 establishment floated in scheme known as voluntary retirement scheme in pursuance to the same workman submitted an application for voluntary retirement on 25.12.1993 for his voluntary retirement with effect from 14.12.1993.

C. On 06.11.1993 circular was issued by which voluntary retirement scheme issued by establishment by 18.12.1993 was suspended with effect from 01.03.1993 so the workman moved an application for withdraw of his application for voluntary retirement on 25.11.1993, however his application for voluntary retirement was accepted but he was retired from service voluntarily.

In view of the above said background the present claim has been filed with the following relief.

"Wherefore, it is prayed that the illegal Voluntary Retirement of the applicant-workman w.e.f. 25.11.1993 is liable to be set aside and the opposite party/employer may kindly be directed to reinstate applicant-workman on the post with all consequential service/salary benefits and pay with all consequential within stipulated period with 12% interest, and/or pass such other order or direction, which this Hon'ble Tribunal may deem just and proper in the circumstances of the case".

On behalf of the respondent a preliminary objection has taken that the workman so under this as per the provision of section 2-A(2) appellant cannot filed the present claim petition by invoking the provisions of as provided under section 2-A(1) read with section 2-A(2) of the Act aggrieved by the order by which his application for voluntary retirement has accepted as such claim petition filed by appellant is liable to be dismissed on the said ground.

In addition to the above said facts learned counsel for respondent further submits that even otherwise application filed by appellant under section 2-A(2) of the Act is not maintainable as in the present application workman/appellant has challenged his voluntary retirement dated 25.11.1993, on 31.12.2020 by filing the present claim petition so the same is barred by the period of limitation as provided u/s 2-A(3) of the Act, so liable to be dismissed on the said ground also.

In rebuttal it is submitted on behalf of the appellant as under:-

Management is well know that the Voluntary Retirement Scheme, circulated vide letter dated 08.12.1988, will remain suspended w.e.f. 01.12.1993 (Ref.- Annexure No. 2 to this written statement).

Applicant-workman gave the Voluntary retirement on 25.11.1993 which was withdrawn by applicant workman himself on dated 27.11.1993 even before it was approved by company itself.

It is provided in the Standing Orders of the company that the pay will be revised on each 5(Five) years of the employees/workman, which has not been done in the matter of the applicant-workman before accepting his illegal voluntary retirement.

Company/respondent is quietly running till date, therefore, his illegal voluntary retirement deserves to be quashed and opposite party/employer is liable to be directed to reinstate applicant-workman on the post with full salary benefits from relieve till his date of retirement from the post/job and pay his entire due salary with 12% interest to the applicant/workman.

Accordingly it is submitted that present case may be decided on merit should not be dismissed on the objection taken on behalf of respondent.

I have heard learned counsel for the parties and have gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may

be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute*-

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

From the bare reading of provision of section 2-A(1) read with section 2-A(2) of the Act, the position is emerged out that individual workman can approach this Tribunal aggrieved by the action of employer by which the services of workman was discharged/dismissed retrenchment or otherwise terminated but not against an order by which his application for voluntary retirement has been accepted, accordingly he was retired.

So the present claim petition filed by him challenging his voluntary retirement w.e.f. 25.11.1993, is not maintainable u/s 2-A(1) read with Section 2-A(2) of the Act, because the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Another question to be considered is that in view of the facts which are stated hereinabove, whether the claim petition filed by workman on 31.12.2020, before this Tribunal u/s 2-A (2) of the Act challenging order of voluntary retirement dated 25.11.1993 is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question finds place in the judgment passed by the Hon'ble Karnataka High court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041*** *wherein it has been held as under* relevant potion quoted:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under

sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

> *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

> *"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-*
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> > *(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)*
> >
> > *(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)*
> >
> > *(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)*
> >
> > *(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)*
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> *5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."*
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> *(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019*

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

> *"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided"*.

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

> *"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.*

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Taking into consideration the above said facts as well as admitted fact that appellant for voluntary retirement from service with effect from 25.11.1993, accepted the amount paid to him in lieu of voluntary retirement, the claim petition filed by him the same is liable to be dismissed.

For the foregoing reasons the claim petition is dismissed as not maintainable under section 2-A(3) of the Industrial Dispute Act 1947.

As prayed on behalf of appellant, it will be open to him to approach the appropriate forum/court for redressal of the grievances as raised in the present case.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 जून, 2023

का.आ. 1152.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रबंध निदेशक, इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड, मनकापुर, गोंडा; निदेशक, इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड, मनकापुर, गोंडा; महाप्रबंधक उत्पादन, इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड मनकापुर, गोंडा; अपर महाप्रबंधक, (व्यक्तिगत एवं प्रशासन) इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड, मनकापुर, गोंडा, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री रामबहादुर, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 10/2013) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26/06/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-140-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th June, 2023

S.O. 1152.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2013) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director, Indian Telephone Industries Ltd, Mankapur, Gonda ; The Director, Indian Telephone Industries Ltd., Mankapur, Gonda ;The General Manager Production, Indian Telephone Industries Ltd. Mankapur, Gonda ; The Additional General Manager, (Personal & Administration) Indian Telephone Industries Ltd , Mankapur, Gonda, and Shri Ram Bahadur, Worker, which was received along with soft copy of the award by the Central Government on 26/06/2023.

[No. L-42025-07-2023-140-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

I.D. No. 10/2013

Ram Bahadur, aged about 46 years S/o late Pherai,
R/o Village-Kahoba, Post Office- Bankatwan Dehat,
Police Station- Motiganj, District-Gonda (Casual Labour No. 707.) …… Workman

Versus

1. Indian Telephone Industries Ltd., Mankapur, District Gonda, through its Managing Director.
2. The Director, Indian Telephone Industries Ltd., Mankapur District-Gonda.
3. General Manager Production, Indian Telephone Industries Ltd. Mankapur, District-Gonda
4. Additional General Manager, (Personal & Administration) Indian Telephone Industries Ltd., Mankapur, District-Gonda. ….Respondent

Facts of the case.

Facts in brief as pleaded by appellant in his clam petition are under that on 12.12.1987 he was appointed on the post of Apprentice Welder on the stipped Rs. 260/- per months in the C.M.B-M.P. department of Indian Telephone Industries Ltd. Mankapur District Gonda (hereinafter referred as I.T.I.).

By an order dated 11.02.1991 his service was retrenchment/terminated.

Aggrieved by order dated 11.02.1991 by which his services were terminated. He along with other co-worker filed writ petition No. 4191(S/S) of 1991 B.L. Shukla and Others Versus I.T.I. Mankapur District Gonda, which was dismissed by an order dated 27.10.2010 relevant portion reads as under:-

The case of the petitioner is that they have completed more than 240 days with the opposite parties and their services have been retrenched illegally.

Sri V.R. Singh appearing for the opposite parties has drawn the attending of the court towards the judgment of Hon'ble Supreme Court in the case of ONGC LTD AND Another Vs. Shyamal Chandra BHOWVIK reported in (2006) Supreme Court Case 337. In paragraph 12 of this judgment their Lordship have held.

"The High Court s should not entertain writ petition directly when claim of service of more than 240 days in a year is raised whether a person has worked more than 240 days or not is a disputed question of facts which is not to be examined by the High Court. Proper remedy for the person making such a claim is to raise an industrial dispute under the Act so that the evidence can be analyzed and conclusion can be arrived at."

This Court feels that the writ petition is not maintainable.

The counsel for the petitioner says that it is very harsh upon the petitioners that the petition is being dismissed on this ground while it was earlier entertained by this Court Sri. V.R. Singh points that this was a conditional order and therefore, since the work was not available it has not been complied with.

Law is dynamic and keeps changing with the changing circumstances and values of the society. The order of Hon'ble Supreme Court is always binding on the High Courts, as such when the petition was filed it was entertained because the view was earlier different. Now with the progress this court is bound by their citation given by Sri V.R. Singh.

The petitioners may approach the Labour Court if they so choose as directed by Hon'ble the Supreme Court".

Aggrieved by order dated 27.10.2010 workman filed, special appeal No. 535/ 2011 Chandrika Prasad & 2 others before the Hon'ble High Court Lucknow disposed of by an order dated 27.07.2011, reads as under:-

"Heard learned counsel for parties and perused the pleadings of writ petition.

Learned Counsel for appellants makes a limited prayer for grant of liberty in terms of order dated 03.12.2010, passed in Special Appeal No. 83; of 2010 (Ram Baran and another Versus Indian Telephone Industries Ltd. and others), In similar circumstances with liberty to approach this Labour Court. The relevant portion of order containing the liberty reads as under:-

"We therefore, dismiss the special appeal, but give liberty to the appellants to approach the Labour Court, in case of appellants approach the Labour Court by following the process of law within a period of two months from today, the Labour Court shall decide the claim of the appellants without any period of six months thereafter."

Thus, we dispose of this Special Appeal with limited indulgence while granting liberty in terms of the aforesaid order passed in Special Appeal No. 837/2010.

Special Appeal is, thus, disposed of".

In view of the above said fact of factual background the present claim petition filed before this Tribunal under section 2-A(1) r/w section 2-A(2) of the Industrial Dispute Act.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 30.11.2012 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 11.02.1991 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

In support of his argument above said plea he submits that admittedly as per the case of the claimant his services were terminated on 11.02.1991 aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

On behalf of appellant, it is submitted that in the present case, the services were retrenched/terminated by an order dated 11.02.1991 in contravention to the provisions as provided under section 25(F) of the Act, challenged by him by filling of writ petition No. 4191 (S/S) of 1991 which was dismissed by an order dated 27.10.2010 thereafter he filed a special appeal which was disposed of by an order dated 27.07.2011 and in pursuance to direction given in the special appeal by the Hon'ble High Court. The present claim petition has been filed under section 2-A(1) r/w section 2-A(2) of the Act, so the preliminary objection taken by the respondent is liable to be rejected and the case may be heard and decided on merit.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or

termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 11.02.1991, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 30.11.2012 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

> *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

> *"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided"*.

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

> *"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.*
>
> *25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".*

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

> *"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."*
>
> *(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)*

Reverting to the facts of the present case, it is not in dispute that the service of the workman was terminated on 11.02.1991, challenged by him by filing the present industrial dispute on 30.11.2012.

So, keeping in view the above said facts as well as that the workman cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 11.02.1991 and filed the present case on 30.11.2012 u/s 2-A (2) of the Act, as such the claim petition is barred by the period of limitation provide under section 2-A(3) of the Act liable to rejected.

So far the argument advanced on behalf of learned counsel for claimant that he has filed the present case in pursuance to the order passed by Hon'ble High Court in special appeal NO. 535/2011 is conceived and incorrect because in the special appeal by order dated 27.07.2011 the Hon'ble High Court has directed appellant shall approach the Labour Court by filling of his claim with liberty given to the appellant to approach the Labour Court, within two month from today, however the present I.D. case has been filed by appellant on 30.11.2012 i.e. beyond the period which is provided by Hon'ble High Court by order dated 27.07.2011 in special appeal i.e. two months for approaching this Tribunal.

So appellant cannot derive any benefit on the direction given by Hon'ble High Court in the special appeal rather he has not followed the said direction in order to file the present case before this Tribunal.

For the foregoing reasons filed by workman/claimant is dismissed as barred by period of limitation under section 2-A(3) of the Industrial Dispute Act 1947, with liberty to the claimant/workman to pursue his case before appropriate forum as per law.

Justice ANIK KUMAR, Presiding Officer

नई दिल्ली, 30 जून, 2023

का.आ. 1153.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रबंध निदेशक, इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड, मनकापुर, गोंडा; निदेशक, इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड, मनकापुर, गोंडा; महाप्रबंधक उत्पादन, इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड मनकापुर, गोंडा; अपर महाप्रबंधक, (व्यक्तिगत एवं प्रशासन) इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड, मनकापुर, गोंडा, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री प्रेम नाथ, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 07/2013) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26/06/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-141-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th June, 2023

S.O. 1153.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 07/2013) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director, Indian Telephone Industries Ltd, Mankapur, Gonda ; The Director, Indian Telephone Industries Ltd., Mankapur, Gonda ;The General Manager Production, Indian Telephone Industries Ltd. Mankapur, Gonda ; The Additional General Manager, (Personal & Administration) Indian Telephone Industries Ltd , Mankapur, Gonda, and Shri Prem Nath, Worker, which was received along with soft copy of the award by the Central Government on 26/06/2023.

[No. L-42025-07-2023-141-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

I.D. No. 07/2013

Prem Nath, aged about 48 years s/o Ram Kishun,
R/o Village- Kandaila, Post Office-Moti Nagar,
District Faizabad … Workman

Versus

1. Indian Telephone Industries Ltd., Mankapur, District Gonda, through its Managing Director.
2. The Director, Indian Telephone Industries Ltd., Mankapur District-Gonda.
3. General Manager Production, Indian Telephone Industries Ltd. Mankapur, District-Gonda
4. Additional General Manager, (Personal & Administration) Indian Telephone Industries Ltd., Mankapur, District-Gonda. …… Respondent

Facts of the case.

Facts in brief as pleaded by appellant in his clam petition are under that on May 1981 he was appointed on the post of Technician B & C on the stipped Rs. 300/- per months in the C.M.B-M.P. department of Indian Telephone Industries Ltd. Mankapur District Gonda (hereinafter referred as I.T.I.).

By an order dated 26.01.1991 his service was retrenchment/terminated.

Aggrieved by order dated 26.01.1991 by which his services were terminated. He along with other co-worker filed writ petition No. 4577(S/S) of 1991 Subodh Kumar & 2 Others Versus I.T.I. Mankapur District Gonda, which was dismissed by an order dated 27.10.2010, relevant portion reads as under:-

> *The case of the petitioner is that they have completed more than 240 days with the opposite parties and their services have been retrenched illegally.*
>
> *Sri V.R. Singh appearing for the opposite parties has drawn the attending of the court towards the judgment of Hon'ble Supreme Court in the case of ONGC LTD AND Another Vs. Shyamal Chandra BHOWVIK reported in (2006) Supreme Court Case 337. In paragraph 12 of this judgment their Lordship have held.*
>
> *"The High Court s should not entertain writ petition directly when claim of service of more than 240 days in a year is raised Whether a person has worked more than 240 days or not is a disputed question of facts which is not to be examined by the High Court. Proper remedy for the person making such a claim is to raise an industrial dispute under the Act so that the evidence can be analyzed and conclusion can be arrived at."*
>
> *This Court feels that the writ petition is not maintainable.*
>
> *The counsel for the petitioner says that it is very harsh upon the petitioners that the petition is being dismissed on this ground while it was earlier entertained by this Court Sri. V.R. Singh points that this was a conditional order and therefore, since the work was not available it has not been complied with.*
>
> *Law is dynamic and keeps changing with the changing circumstances and values of the society. The order of Hon'ble Supreme Court is always binding on the High Courts, as such when the petition was filed it was entertained because the view was earlier different. Now with the progress this court is bound by their citation given by Sri V.R. Singh.*
>
> *The petitioners may approach the Labour Court if they so choose as directed by Hon'ble the Supreme Court".*

Aggrieved by order dated 27.10.2010 workman filed, special appeal No. 837/ 2010 Ram Baran & others before the Hon'ble High Court Lucknow disposed of by an order dated 27.07.2011 reads as under:-

> *"Heard learned counsel for parties and perused the pleadings of writ petition.*
>
> *Learned Counsel for appellants makes a limited prayer for grant of liberty in terms of order dated 03.12.2010, passed in Special Appeal No. 83; of 2010 (Ram Baran and another Versus Indian Telephone Industries Ltd. and others), In similar circumstances with liberty to approach this Labour Court. The relevant portion of order containing the liberty reads as under:-*
>
> *"We therefore, dismiss the special appeal, but give liberty to the appellants to approach the Labour Court, in case of appellants approach the Labour Court by following the process of law within a period of two months from today, the Labour Court shall decide the claim of the appellants without any period of six months thereafter."*

Thus, we dispose of this Special Appeal with limited indulgence while granting liberty in terms of the aforesaid order passed in Special Appeal No. 837/2010.

Special Appeal is, thus, disposed of".

In view of the above said fact of factual background the present claim petition filed before this Tribunal under section 2-A(1) r/w section 2-A(2) of the Industrial Dispute Act.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 30.11.2012 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 11.02.1991 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

In support of his argument above said plea he submits that admittedly as per the case of the claimant his services were terminated on 26.01.1991 aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

On behalf of appellant, it is submitted that in the present case, the services were retrenched/terminated by an order dated 26.01.1991 in contravention to the provisions as provided under section 25(F) of the Act, challenged by him by filling of writ petition No. 4191 (S/S) of 1991 which was dismissed by an order dated 27.10.2010 thereafter he filed a special appeal which was disposed of by an order dated 27.07.2011 and in pursuance to direction given in the special appeal by the Hon'ble High Court. The present claim petition has been filed under section 2-A(1) r/w section 2-A(2) of the Act, so the preliminary objection taken by the respondent is liable to be rejected and the case may be heard and decided on merit.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation,

mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 26.01.1991, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 30.11.2012 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

> *"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.*
>
> *20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:*
>
> > *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*
>
> *21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."*

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

> *"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.*
>
> *8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.*
>
> *The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the*

year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, it is not in dispute that the service of the workman was terminated on 26.01.1991, challenged by him by filing the present industrial dispute on 30.11.2012.

So, keeping in view the above said facts as well as that the workman cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 11.02.1991 and filed the present case on 30.11.2012 u/s 2-A (2) of the Act, as such the claim petition is barred by the period of limitation provide under section 2-A(3) of the Act liable to rejected.

So far the argument advanced on behalf of learned counsel for claimant that he has filed the present case in pursuance to the order passed by Hon'ble High Court in special appeal NO. 837/2010 is conceived and incorrect because in the special appeal by order dated 27.07.2011 the Hon'ble High Court has directed appellant shall approach the Labour Court by filling of his claim with liberty given to the appellant to approach the Labour Court, within two month from today, however the present I.D. case has been filed by appellant on 30.11.2012 i.e. beyond the period

which is provided by Hon'ble High Court by order dated 27.07.2011 in special appeal i.e. two months for approaching this Tribunal.

So appellant cannot derive any benefit on the direction given by Hon'ble High Court in the special appeal rather he has not followed the said direction in order to file the present case before this Tribunal.

For the foregoing reasons filed by workman/claimant is dismissed as barred by period of limitation under section 2-A(3) of the Industrial Dispute Act 1947, with liberty to the claimant/workman to pursue his case before appropriate forum as per law.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 3 जुलाई, 2023

का.आ. 1154.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकता के पंचाट (27/2016) प्रकाशित करती है।

[सं. एल-12011/1/2016-आईआर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 3rd July, 2023

S.O. 1154.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 27/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen.

[No. L-12011/1/2016- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 27 OF 2016

Parties: Employers in relation to the management of

UCO Bank, Head Office-I

AND

Their Workmen

Appearance :

On behalf of Management UCO Bank : Mr. P.C. Ghosh, Adv.

On behalf of the Workmen/Union : Absent

Dated 25th May, 2023

AWARD

The Management of Bank is present.

The Union which has espoused the present dispute is found absent today too like on the previous dates. The record shows notice of appearance has been duly served upon the Union on 13.11.2022 as per A.D. Card. Despite receipt of notice, the Union failed to appear and proceed with the case.

Further, it appears from order sheet since 06.01.2020, the Union has stopped putting its appearance.

Therefore, it can be safely assumed the Union is no more interested to proceed with the hearing of the dispute espoused by it. Be that as it may, the Govt. of India, Ministry of Labour vide its order No. L-12011/1/2016-IR(B-II) dated 15.03.2016 referred the dispute "Whether the action of the management of UCO Bank, Head Office-I, 10, Brabourne Road, Kolkata-700 001 and M/s. CIS Bureaus Facility Services Pvt. Ltd. in terminating the services of 146 no. of security guards in their 53 ATMs in different districts in West Bengal without suitably compensating them on the line of retrenchment compensation under 25 (F) of Industrial Dispute Act, 1947 is justified? Specially in the circumstances that both UCO Bank as Principal Employer and M/s. CIS Bureaus Facility Services Pvt. Ltd. as

contractor were working without valid registration and licence under CL (R&A) Act, 1970. If not to what relief the workmen are entitled to?" for adjudication to this tribunal.

The Union after putting appearance has filed its claim statement, but it has failed to substantiate its claim by adducing oral and documentary evidence.

Therefore, this Tribunal is unable to pass any award on the basis of uncorroborated claim statement or decide the dispute under reference.

Record shows the case has already been proceeded exparte against the contractor employer.

In the above, no dispute award is passed and reference case no. 27/2016 is disposed of.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 4 जुलाई, 2023

का.आ. 1155.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, II -दिल्ली के पंचाट (119/2012) प्रकाशित करती है।

[सं. एल-12011/90/2011-आईआर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 4th July, 2023

S.O. 1155.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.119/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court -II Delhi as shown in the Annexure, in the industrial dispute between the management of Allahabad Bank and their workmen.

[No. L-12011/90/2011- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 119/2012

Date of Passing Award- 8th May, 2023

Between:

Sh. R.S Saini,
The President,
All India Allahabad Bank Employees Association,
R/o:115, Yadav Park, Najafgarh Road,
Nangloi, New Delhi-110041 ….Workman

Versus

The General Manager,
Allahabad Bank,
17, Parliamant Street,
New Delhi-110001 ….Management

Appearances:-

Claimant in Person Sh. S.K Saini.
Sh. Rajat Arora, Ld. A/R for the management.

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of (i) The General Manager, Allahabad Bank, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12011/90/2011(IR(B-II)) dated 24.05.2012 to this tribunal for adjudication to the following effect.

"Whether the action of the management of General Manager, Allahabad Bank, Parliament Street, New Delhi in making the payment of stoppage of 02 increments after a lapse of 13 years on 01.11.99 in reference to CGIT No.2, Dhanbad award dated 10.6.86 in ID case No. 103 of 1985 to Sh. Ranbir Singh Saini, Ex-exmployee of Allahabad Bank, without any interest on delayed payment is justified? What benefit will be given to the workman and from which date?"

The claimant in the claim statement has stated that he joined the service of the mgt Bank as a Clerk in the year 1973 and initially posted in the State of Bihar. Subsequently he got transferred to Delhi in the year 1989 and served there until his retirement in November 2001. At the time of retirement, he was holding the post of supervisor and posted at Baroda House Branch of the Bank. During the period of his employment, he was an active union member and office bearer of the union. He had held the post of the All India President and General Secretary of the said union. When posted in Bihar, on 03.10.1979 a false charge sheet was served on him on account of his union activity. Though he gave reply to the same, another charge sheet dated 26.12.1979 was served and the claimant gave reply to the same too. The bank conducted the departmental inquiry against him and at the end of the inquiry, imposed punishment by stopping two increments which was an act of arbitrariness. The claimant challenged the same before the Labour Commissioner and for failure of conciliation, Ministry of Labour referred the matter to CGIT No.2 Dhanbad where it was registered as ID No. 103/1985. After hearing the matter, the CGIT Dhanbad passed an award in favour of the claimant on 10.06.1986, and set aside the punishment by restoring two increments. The Bank mgt challenged the said award by filing a writ petition before the Hon'ble High Court of Patna as CWJC 4212/1986 the said writ petition was dismissed by Hon'ble High Court in the year 1998, confirming the order passed by the CGIT Dhanbad. Even after dismissal of the writ petition, the bank did not restore the increments nor paid the arrears causing huge financial loss to him. The claimant then made several correspondences with the higher authorities of the Bank for implementation of the award. A legal notice in this regard was sent to the mgt on 10.03.1999 addressed to the chairman of the Bank. In spite of all these efforts, the bank did not pay his legitimate dues. Finding no other way the claimant initiated an execution proceeding before the Regional Labour commissioner Patna. For the intervention of the RLC the Bank made payment of Rs. 42,556.36 by crediting the same in his bank account after deducting a some of Rs. 15,200 towards income tax, which too was illegal as the claimant was not an income tax payee in the relevant years. The workman claimed interest on the late payment but the bank did not consider the same. Being aggrieved, the workman had filed LCA no. 18/2001 before the CGIT 2 Delhi. But the same was withdrawn as he was advised to file a claim before the competent authority. Thus the claimant raised a dispute demanding interest for the late release of the money pursuant to the award before the labor commissioner. Another round of conciliation took place. But for the failure of the conciliation the appropriate govt. referred the matter to this Tribunal for adjudication. The claimant has further stated that the bank made payment of the amount 13 years after the award passed by the CGIT Dhanbad. The Bank did not consider his demand for payment of interest and the said act of the Bank is illegal, arbitrary and prejudicial to the interest of the claimant. Hence, in the claim petition the prayer has been made for a direction the bank to pay interest at the rate of 12% per annum on the accrued amount for the period 1981 to 1999 amounting to Rs. 10,9,725 together with Rs. 2 Lakh as compensation for the harassment and mental agony suffered by him.

The mgt appeared and filed written statement admitting all other facts except the demand for interest. It has been stated that the present proceeding is hit under the principles of Resjudicata. It has been stated that the LCA no. 18/2001 filed by the claimant was dismissed as withdrawn and at that time no liberty was granted to the claimant for raising a separate industrial dispute. The CGIT Dhanbad in its award dated 10.06.1985 passed in ID NO. 103/1985 had never directed for payment of interest. The mgt in exercise of its statutory rights had challenged the award before the Hon'ble high court of Patna which was disposed of in the year 1997. The time consumed between the date of award and the date of dismissal of the writ petition was not for any fault of the mgt. However, after dismal of the writ petiton in the year 1997, the Bank mgt made payment to the claimant in the year 1999 and the time was consumed in the official process for sanction of the money. Hence, in absence of contributory negligence of the Bank, interest is not payable. It has also been stated that when the LCA filed was dismissed the present proceeding is not maintainable.

The claimant filed replication denying the stand taken in the written statement. On this rival pleading the following issue are framed for adjudication.

Issues

1. Whether the action of the mgt of General Manager, Allahabad Bank, Parliament Street, New Delhi in making the payment of stoppage of 02 increment after a lapse of 13 years on 01.11.1999 in reference to CGIT No.2 Dhanbad award dated 16.06.1986 in ID. Case No. 103 of 1985 to Sh. Ranbir Singh Saini, Ex-employer of Allahabad Bank, without any interest on delayed payment is justified? If so its effect?

2. To what relief the workman is entitled to and from which date?

The claimant examined himself as WW1 and filed the photo copy of the award passed by the CGIT Dhanbad as ww1/1. He has also filed the photocopies of the letter of the Chief Manager of Allahabad Bank, Parliament Street, addressed to the Regional manager, the representation of the claimant to the General manager, the copy of the legal

notice and the reply filed by the Bank during the conciliation proceeding to the labour commissioner and a calculation sheet of interest prepared by the claimant. Similarly, the mgt examined its chief manager as mw1 who filed the photo copy of the order passed by the High Court of Patna dismissing the writ petition filed challenging the award passed by the CGIT. Both the witnesses were cross examined at length.

Findings

The admitted facts are that a domestic inquiry was held against the claimant and he was punished by stoppage of two increments. The same was challenged in ID No. 103/1985 and the Tribunal by order dated 10.06.1986 restored the increments stopped and set aside the order of punishment made in the domestic inquiry. It is also admitted that the writ petition filed by the mgt was dismissed and the order of the CGIT was confirmed. Now, the grievance of the claimant is that the award, though was passed in 1986 the Bank in order to harass him filed the writ petition which remained pending for more than 10 years and ultimately decided in 1997 in favour of the claimant. This was a deliberate action of the mgt. Even then, the Bank delayed payment and the same was realized in the year 1999 without interest. Thus the claimant's prayer for payment of interest is genuine. During cross examination the claimant has admitted that he is demanding interest for the period 1982-1999 and LCA filed by him was withdrawn on the advice of the PO CGIT Delhi. He thereby insisted that the delay in payment being attributable to the mgt Bank, he is entitled to interest. This stand of the claimant has been denied by the mgt. Thus, the short question which need to be answered is when the amount is due to the claimant on account of the award passed by the CGIT 2 Dhanbad, and in the said award, there is no direction for payment of interest, can the Bank be directed to pay the interest.

The claimant pursing the proceeding has placed reliance in the case of S.K Dua vs. State of Haryana reported in 2008 Rajdhani Law Reporter, 71(SC) and submitted that when there is delay in payment of the legitimate dues, the claim for interest on late payment is well founded under article 14,16 and 21 of the Constitution of India. But, the judgment cited by the claimant is distinguishable on facts. In the case of S.k Dua he was denied his dues due to pendency of an inquiry. After closure of the inquiry which took about four years the department paid him his dues without interest. Thus, the Hon'ble court considered the same to be illegal and directed her payment of interest. But the facts of the present proceeding is different from the claim of S.K Dua. In this case the stoppage of increments was for a punishment and the punishment has been set aside by the industrial adjudicator who directed release of the increments. In the award passed by the Industrial Tribunal there is no direction for payment of interest. Hence, the Bank rightly executed the order of the industrial Tribunal by making payment of the arrear amount of the increments without interest. The other limb of the arguments advanced by the claimant is that the Bank intentionally challenged the award of the CGIT by filing a writ petition before the Hon'ble High court of Patna which took more than 100 years to be disposed of and ultimately caused delay in payment of the dues to the claimant. This argument does not sound convincing since a party to a litigation has right to challenge the decision passed against him in a higher forum. Thus, it is held that the claim of the claimant for interest and compensation on account of prolonged litigation are not entertainable when no order was passed to that effect by the CGIT 2 Dhanbad. Hence ordered.

ORDER

The reference be and the same is answered against the claimant. It is held that the claimant is not entitled to the interest on the arrear or compensation which was not directed by the CGIT while passing award as claimed by him.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 4 जुलाई, 2023

का.आ. 1156.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, II- दिल्ली के पंचाट (28/2009) प्रकाशित करती है।

[सं. एल-12012/93/2008-आईआर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 4th July, 2023

S.O. 1156.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 28/2009) of the Cent.Govt.Indus.Tribunal-cum-Labour Court -II Delhi as shown in the Annexure, in the industrial dispute between the management of Allahabad Bank and their workmen.

[No. L-12012/93/2008- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 28/2009

Date of Passing Award- 8th May, 2023

Between:

Sh. Duli Chand,
C-15B, Hari Nagar, Janta Flats
New Delhi-110063 ….Workman

Versus

The General Manager,
Allahabad Bank, Nodal Regional Office,
3rd floor, 17, Parliament Street,
New Delhi-110063 ….Management

Appearances:-

Shri R.S Saini, Ld. A/R for the claimant.
Shri Rajat Arora, Ld. A/R for the management.

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of The General Manager, Allahabad Bank, Nodal Regional Office, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12012/93/2008 (IR(B-II)) dated 25.03.2009 to this tribunal for adjudication to the following effect.

> "**Whether the termination of service of Sh. Duli Chand, ex cashier by the management of Allahabad Bank w.e.f 21.05.04 is just and fair and legal? Whether the non releasing of arrear as per industrial level settlement dated 02.06.05 beyond 90 days of signing the industrial level settlement in respect of Sh. Duli Chand just fair and legal? Whether Sh. Duli Chand is entitled to interest on delayed payment w.e.f 02.09.05 what relilef the workman concerned is entitled to and from which date?"**

This order deals with the grievance of the claimant (since dead and substituted by legal heirs) with regard to the punishment imposed on him in the domestic inquiry which has been described as unreasonably disproportionate to the charge leveled .

The facts as pleaded by the claimant is that , he was initially appointed as a peon in the management Bank on 16.12.1983 as a regular employee. Later on he was promoted to the post of clerk cum cashier of the Management Bank on 07.05.1993 and was posted in different branches. On20.05.2004, he was posted in the branch of the Bank at Mongolpur Kalan New Delhi. On that day he was placed under suspension in contemplation of a disciplinary action, on the allegation / complaint received from the customers of the Bank relating to misappropriation of the money from the accounts of the customers in a fraudulent manner. The order of suspension was followed by the notice to show cause. The show cause submitted by him was not found as satisfactory and thus, charge sheet was served on him and he was called upon to submit his reply.

The reply submitted by the claimant was found un satisfactory and the authorities decided to ensue the domestic inquiry against him. During the inquiry the Bank as well as the claimant as the charged employee adduced their evidence and after considering the same the enquiry officer, on04.08.2005, submitted his report finding that the charges against the charge sheeted employee stands proved. The disciplinary authority served the report of inquiry on the claimant and called for his explanation which was again found not satisfactory. Hence for the fraudulent action

amounting to misconduct committed by the claimant, the disciplinary authority imposed the punishment of removal from service with a further order that the charged employee shall not get his wage/ salary for the period under suspension except the subsistence allowance already paid. The said order is under challenge in this proceeding.

The grievance of the claimant is that the inquiry was not conducted in accordance with the principles of natural justice and the procedure prescribed in the Bi partite settlement was not followed. Not only that the punishment awarded was disproportionately harsh and high. Hence the claimant has made a prayer to set aside the order of the disciplinary authority.

The management Bank had filed written statement denying the stand taken in the claim petition. It has been stated that the allegations were matters of record and the inquiry was conducted fairly by following the principles of natural justice. The claimant had all along participated in the inquiry and the charges against him were proved. The explanation offered by the claimant was not accepted as satisfactory and the disciplinary authority had rightly passed the order which needs no interference.

On the basis of the pleadings, this Tribunal framed altogether three issues and the issue relating to the fairness of the Domestic inquiry was heard and considered as a preliminary issue.

The tribunal after considering the materials placed on record and the evidence adduced by both the parties, by order dt 17.11.2021, came to hold that the domestic inquiry was conducted in accordance to the Rule and procedure and principles of natural justice were also followed during the said inquiry. The issue relating to the fairness of the inquiry was accordingly decided against the claimant observing that principles of natural justice was not violated during the inquiry and it was directed that both the parties shall advance argument on the proportionality of the punishment imposed. Hence extensive argument was advanced by the learned AR for the Bank Management to establish that the punishment imposed on the claimant commensurates the charge of mis conduct on account of financial irregularities and fraud committed by the claimant.

The learned AR for the claimant argued to the contrary and submitted that the punishment is disproportionately high since the superannuation benefits were not allowed nor the pay during the period of suspension.

Whereas the learned AR for the Management supported the order imposing punishment as proper, the claimant has described the same as extremely harsh saying that for the said punishment the claimant was denied the benefits for the remaining years of his service which had caused huge financial loss in terms of salary and pension

This tribunal in view of the arguments advanced has to give a finding on the proportionality of the punishment imposed on the claimant. In the case of **Muriadih Colliery VS Bihar CoallieryKamgar Union (2005) 3 SCC331,**The Hon'ble SC have held

"it is well-established principle in law that in a given circumstance, it is open for the Industrial Tribunal acting u/s 11-A of the I D Act 1947 to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the tribunal decides to interfere with such punishment awarded in domestic inquiry, it should bear in mind the principle of proportionality between the gravity of the offence and stringency of the punishment."

Whether a misconduct is severe or otherwise depends on the facts of each particular case. In a case where the charge is about misappropriation of public money or breach of Trust, no doubt the same is serious in nature and distinguishable from the charge of demeanor or in subordination. In this case, during the relevant time, the claimant was serving as the cashier of a Nationalized Bank. The business of the bank thrives on the Trust of the customers and the flawless service provided. In this case the charge against the claimant is that, he between 14.01.2004 to 12.05.2004, by mis using his position got on cheque book issued against the account of a customer and using the said cheque managed withdrawal of huge money. Not only that, he also effected withdrawal of Rs 50,000/- from the account of a customer who had requested for withdrawal of 10,000/- by filling up the withdrawal slip in his own hand writing , but handed over Rs 10,000/-to her. When it was detected he made refund of the said amount. More over the finding in the relevant inquiry is based upon documentary evidence which are the transaction related documents of the Bank and oral evidence too.

In the case of **Regional Manager U.P.S R TC,Etawah&others VS Hotilal and another,2003(3) SCC 605, reffered in a later case ofU.P.SRTC VS NanhelalKushwaha(2009) 8 SCC, 772,** the Hon'bleAppex Court have held that "The court or Tribunal while dealing with the quantum of punishment has to record reason as to why it is felt that the punishment inflicted was not commensurate with the proved charge. A mere statement that the punishment is not proportionate would not suffice. It is not only the amount involved ,but the mental set up, the type of the duty performed and similar relevant circumstances, which go into the decision making process are to be considered while deciding the proportionality of the punishment awarded. If the charged employee holds a position of trust, where Honesty and Integrity are in built requirements of functioning, it would not be proper to deal with the matter leniently."

As stated in the preceding paragraph, the allegation against the claimant was of misconduct on account of financial irregularities. The admitted evidence is that before initiation of domestic inquiry claimant was placed under suspension in contemplation of the inquiry. The inquiry was conducted by the Bank and the claimant was found involved in mis appropriation of the public money in the capacity of cashier.

The learned AR for the management relied upon the judgment of the Hon'ble SC in the case **of M/S Firestone Tyre and Rubber Co of India vs The Management And Others** to argue that the discretion vested in the Tribunal u/s 11-A should be judiciously exercised. The crux of his argument is that the punishment imposed on the claimant is appropriate to the charge and the Tribunal should not interfere.

The learned AR for the claimant on the other hand argued on the legislative intention behind incorporation of sec 11A of the Act. By placing reliance in the case of **ML Singlavs Punjab National Bank,AIR 2018 SC 4668,** submitted that in the said judgment the Hon'ble SC have held that even if the issue relating to the fairness of the inquiry is decided in favour of the employer, even then the Tribunal has to consider if the punishment commensurate the charge.

In this case the evidence adduced before this Tribunal reveals that the alleged occurrence is about mis appropriation of the money of the customers. The same has deeply impacted the reputation of the Bank and it's business. The conduct of the claimant as stated by the Management led to loss of confidence of the employer. In such a situation the imposition of punishment appears to be proportionate and commensurate the charge. It can not be held as a harsh punishment. Hence ordered.

ORDER

The reference be and the same is answered against the claimant. It is held that the punishment of removal from service as imposed on the claimant by the management is just, legal and commensurate the charge and the claimant is not entitled to the benefits claimed.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 4 जुलाई, 2023

का.आ. 1157.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एमएस। ईएफसी लॉजिस्टिक्स प्राइवेट लिमिटेड लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नंबर 2-मुंबई के पंचाट (44/2017) प्रकाशित करती है।

[सं. एल-16014/02/2017-आईआर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 4th July, 2023

S.O. 1157.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 44/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No.2 Mumbai as shown in the Annexure, in the industrial dispute between the management of M/S. EFC LOGISTICS PVT. LTD and their workmen.

[No. L-16014/02/2017- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2, MUMBAI

Present: LAXMI NARAIN JINDAL Presiding Officer

REFERENCE NO.CGIT-2/44 of 2017

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

M/S. EFC LOGISTICS PVT. LTD.

The Director,
M/s. EFC Logistics Pvt. Ltd.,
71/802, Kamala Charan, Jawahar Nagar,

Road No.Mumbai – 400 062

AND

THEIR WORKMEN.
President,
Swaraj Transport & General Workers Union,
Mira Sadan, Shop No.6, Plot No.36,
Sectory-20, Kharghar, Tal. Panvel,
Distt. Raigad, Navi Mumbai – 410210.

APPEARANCES:

FOR THE EMPLOYER	:	Mr. Hemant Rane, Sr. Manager
FOR THE WORKMEN UNION	:	Mr. Sandeep Abhani, President – Sawaraj Transport & General Workers Union

Dated the 18th April, 2023.

AWARD

This reference has been made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, vide Government of India, Ministry of Labour & Employment, New Delhi, order No. L-16014/02/2017 – IR (B-II) dated 11.10.2017. The terms of reference given in the schedule are as follows :

> **"Whether the action of the employer of M/s. EFC Logistics India Pvt. Ltd., in terminating of 8 workers with effect from 04.02.2017 after service of 41 point Charter of Demand by Swaraj Transport & General Workers Union is justified? If not, to what relief the said 8 workers are entitled to and from which date ?"**

This reference is pending for 27.06.2023

An application has been filed by both the parties for taking up the matter on today's board.

Another application has been filed by the second party – Swaraj Transport & General Workers Union for withdrawal of the present reference as the dispute between the parties has amicably been settled. The said application is also signed by the representative of the management and he has no objection.

In view of the above, the case file is taken up on today's board.

Shri Sandeep Abhani, President – Swaraj Transport & General Workers' Union – second party, has made the following statement:

> "It is stated that the present matter is already settled between both the parties and, thus, the present reference may be dismissed as withdrawn and 'no dispute' Award may be passed."

On the other hand, Shri Hemant Rane, Sr. Manager, M/s. EFC Logistics Pvt. Ltd. – Management, has also made the following statement:

> "I have heard the above statement of Shri Sandeep Abhani, President – Swaraj Transport & General Workers' Union. I have no objection if the present reference is answered accordingly."

In view of the above, 'no dispute' award is passed in the present reference.

File be consigned to the record room after necessary compliance.

LAXMI NARAIN JINDAL, Presiding Officer

नई दिल्ली, 4 जुलाई, 2023

का.आ. 1158.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नैशनल बैंक के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, II-दिल्ली के पंचाट (81/2016) प्रकाशित करती है।

[सं. एल-12012/60/2016-आईआर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 4th July, 2023

S.O. 1158.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 81/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court -II Delhi as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-12012/60/2016- IR(B-II)]
SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 81/2016

Date of Passing Award- 09th May, 2023

Between:

Shri Ramakant Pathak And Sh. Rama Shankar Mahto
Represented by Vice President,
PNB Workers Union,
L-Block, Cannaught Circus,
New Delhi-110001 ….Workman

Versus

The Assistant General Manager (P)
Punjab National Bank,
Cricle Office-North Delhi, 4th Floor,
Rajendra Bhawan, Rajender Palce
New Delhi ….Management.

Appearances:-

Shri I.P Singh, Ld. A/R for the claimant.
Shri Rajat Arora Ld. A/R for the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. The Assistant General Manager (P)Punjab National Bank, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12012/60/2016(IR(B-II)) dated 05.09.2016 to this tribunal for adjudication to the following effect.

> **"Whether the action of the management of Punjab National Bank by not paying the Officiating Allowance to Sh. Ramakant Pathak and Sh. Rama Shankar Mahto both peon, from March, 2010, is fair and legal? If not to what relief the workman is entitled to and from which date?"**

As per the claim statement the claimants Ramakant Pathak and Rama Shankar Mahato were working as peon and permanent employees in the Mgt Bank, when they were directed by the Branch manager to perform the duties of cash clerk. Both of them are the members of the Punjab National Bank workers union which is a registered union and has been authorized to espouse the cause of the workmen. It has been stated that on the instruction of the branch managers they were officiating on the cash seat of the Bank as clerks from time to time since Oct 2008. As such they are entitled to officiating allowance as per the rules and practice of the Bank. From Oct 2008 to Feb 2010 the Bank paid them officiating allowance for performing/officiating as cash clerk. But suddenly, from march 2010 onwards, the Bank stopped making payment of the officiating allowances without any reason. The request made by the claimant in this regard from time to time were not considered. During the period between March 2010 to March 2012 the Bank did not pay them the officiating allowance without any reason. However, after march 2012 the Bank again resumed payment of the officiating allowance to the applicants for the number days they actually performed the duties as clerk. Several requests and representations made by the claimants to the Bank mgt for release of the unpaid officiating allowance remained un headed. The claimants also represented their case through PNB workers unions Delhi. But except the verbal assurance no other result could be achieved. Finding no other way the claimants raised a dispute before the Labour Commissioner cum Conciliation Officer on 16.07.2015. But the Bank Mgt did not cooperate nor filed any reply which led to failure of conciliation. The appropriate govt. thus referred the matter to this tribunal for adjudication on the entitlement of the claimants for the officiating allowance for the period as mentioned in the claim petition. The claimants have briefly stated a calculation of the officiating allowance payable to them individually. In

the claim petition the prayer has been made for a direction to the mgt for payment of the officiating allowance for the relevant period along with interest at the rate of 12% per annum and cost of litigation, compensation etc.

The mgt of the Bank appeared and filed written statement denying the claim of the claimants. While admitting that the claimants Ramakant Pathak and Rama Shankar Mahato are the regular and permanent employees of the Bank, it has been stated that Ramakant Pathak was working as a Duftri at the Branch of the Bank at Barwala village Delhi and Shankar Mahato was working as a peon cum Duftri in the branch of the bank at Sant Nirankari Colony during the relevant period that is between March 2010 to March 2012. Both of them are now retired. Both the claimants being non- matriculate, were not eligible for the officiating allowance as per the Bank rules. The policy in respect of promotion from subordinate cadre to clerical cadre and fitment of salary on promotion, was circulated by circular no. 1289 dt. 21.06.1991. All India PNB Employees Federation had entered into a conciliation settlement with the mgt on 19.06.1991, in respect of promotion from subordinate cadre to clerical cadre. As per this settlement no opportunity shall be given to the sub staff to officiate in the clerical cadre if he is a non matriculate sub staff or a guard, chowkidar, full time sweeper cleaner drawing full wage even though they are matriculate or graduate. These claimants were neither matriculate nor any office order was issued to them for officiating as clerks. The claimants not being eligible for promotion to clerical cadre were not allowed to officiate and accordingly the officiating allowance were not paid. The mgt had thus prayed for dismissal of the claim as not maintainable under law.

The workmen filed rejoinder stating that they are not concerned with the Rule of the Bank. They were asked to perform the duties of cash clerk from March 2010 to March 2012 and for discharging the work of the cash clerk, they are entitled to the officiating allowance. They have further stated that as per the circular issued by the Bank from time to time, they are entitled to the officiating allowance which was paid to them after March 2012. By filing different circulars of the Bank they have stated that the Bank has taken a false stand in the matter.

No formal issues were framed in this proceeding. Hence the only point which need to be answered as if the claimants are entitled to officiating allowance for the period March 2010 to March 2012 and if denial of the same by the Bank is legal.

The claimants examined themselves as ww1 and ww2. They have filed the copy of the claim petition filed before the ALC(Central) through the union, advancing the claim. Besides that, the claimant have filed the circular of the Bank issued by its Human Resource Department relating to promotion of sub staff to clerical cadre. In this circular dated 06.07.2015, the educational qualification and experience for such promotion has been prescribed. In addition to that the claimants have filed a number of documents which are in the nature of a register showing discharge of work by the claimants as officiating clerks during the period March 2010 to March 2012. These documents have been marked as ww1/5(colly). The claimants have also filed the salary details of the relevant period showing non-payment of officiating allowance during that period. Exbt ww1/8 is the document showing the status of the claimants as the officiating clerk for the relevant period. But the mgt did not adduce any oral or documentary evidence to substantiate the stand taken by its or to disprove the claim the claimant though both the witnesses were cross examined at length by the Ld. A/R for the mgt.

Findings

The admitted facts are that the claimants were the permanent sub staff of the Bank and both of them have retired from service. Whereas Ramakant Pathak retired in the year 2017 Rama Shankar Mahato retired on 31.03.2016. During their examination both the witnesses have stated that it is a matter of practice in the Bank that when any clerk of the Branch remains absent, with a view to manage the affairs without any disruption, the branch manager directs the sub staff to officiate as clerk. No formal office orders are issued in this regard. But for payment of the officiating allowance, a register is maintained indicting the name of the sub staff the absence of the persons for whom he is officiating and the number of days he officiated. At the end of the month, the said details are taken into consideration for payment of the officiating allowance as salary. Both the witnesses have further stated that during the period between Oct 2008 to Feb 2010 they were getting the officiating allowance for performing the duty of officiating cash clerk. But in March 2010 and till March 2012 the Bank without any reason stopped the payment. A calculation has been attached along with the claim statement which shows that the claimant Ramakant Pathak had performed the officiating duty for 642 days whereas Rama Shankar Mahato had performed the officiating duty for 419 days during the period between March 2010 to March 2012 but the officiating allowance was not paid to them for the said period. The witnesses have further stated that after March 2012, they are being paid officiating allowance again by the Bank.

Though in the w/s, the mgt has raised objection with regard to the eligibility of the claimants for officiating as clerks, no evidence has been adduced by the Bank to prove the same. On the contrary, the workmen have adduced oral and documentary evidence to show that they were officiating prior to March 2010 and after March 2012 and are/were getting the officiating allowance which is evidently clear from the copy of the register filed by the claimants and marked as ww1/6, 1/7 and 1/8. No evidence to disprove the contents of the said documents have been filed by the mgt. Hence the evidence of the claimant stand rebutted and it is proved that the Bank mgt treated them unfairly by denying the officiating allowance for the period between March 2010 to March 2012 and they are held entitled to the same. Hence ordered.

ORDER

The reference be and the same is answered in favour of the claimants. It is held that the claimants Ramakant Pathak is entitled to officiating allowance for a period of 642 days and the claimant Rama Shankar Mahato is entitled to officiate allowance for a period 419 days during the period between march 2010 to march 2012 as per their entitled pay scale. The Bank mgt is directed to calculate and pay the amount to the claimants within two months from the date of publication of this award with a nominal interest of 3 from the date of accrual and till the payment is made failing which the amount shall carry interest at the rate of 6 per cent per annum from the date of accrual and till the actual payment is made. No order is passed as to cost.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 4 जुलाई, 2023

का.आ. 1159.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक (अब इंडियन बैंक) के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, II-दिल्ली के पंचाट (266/2021) प्रकाशित करती है।

[सं. एल-39025/01/2023-आईआर(बी-II)-19]

सलोनी, उप निदेशक

New Delhi, the 4th July, 2023

S.O. 1159.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 266/2021) of the Cent.Govt.Indus.Tribunal-cum-Labour Court -II Delhi as shown in the Annexure, in the industrial dispute between the management of Allahabad Bank (Now Indian Bank) and their workmen.

[No. L-39025/01/2023- IR(B-II)-19]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 226/2021

Date of Passing Award- 10th May,2023

Between:

Shri Satya Pal Singh, S/o Sh. Jagdish Singh,
R/o RZF-148, Street No.-04, Mahavir Enclave,
New Sulabh Complex, Palam, Delhi-110045. …Workman

Versus

The Zonal Manager,
Allahabad Bank (Now Indian Bank)
Zonal Office, 17 Parliament Street,
New Delhi-110001. ….Management

Appearances:-

Claimant in person.

Sh. Vipin Chandra, Ld.A/R for the management.

AWARD

This is an application filed u/s 2A of the Id. Act by the claimant wherein he has alleged illegal termination with a prayer for reinstatement in service with full back wages and consequential benefits. Notice

being served, the mgt appeared through it's A/R and on completion of pleadings issues were framed by order dated 01.08.2022. When the matter was pending for evidence to be adduced by the claimant, a proposal was advanced by the parties for amicable settlement. The matter was adjourned to 11.02.2023 for settlement during the National Lok Adalat. Prior to that date on 24.01.2023 the claimant gave a statement to the effect that he has settled the dispute with the mgt and does not have any grievance against the mgt for which he wants to withdraw the proceeding. In view of the said statement the matter was decided during the National Lok Adalat held on 11.02.2023 and this no dispute award has been passed.

Hence ordered.

ORDER

The claim petition is dismissed for want of dispute raised by the claimant and this award is accordingly passed.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The application u/s 2-A of the ID. Act, 1947 is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 4 जुलाई, 2023

का.आ. 1160.—औघोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नैशनल बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय, II- दिल्ली के पंचाट (65/2016) प्रकाशित करती है।

[सं. एल-39025/01/2023-आईआर(बी-II)-18]

सलोनी, उप निदेशक

New Delhi, the 4th July, 2023

S.O. 1160.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.65/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court -II Delhi as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-39025/01/2023- IR(B-II)-18]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-I, New Delhi.

INDUSTRIAL DISPUTE CASE No. 65/2016

Date of Passing Award- 09th May, 2023

Between:

Shri. Ramesh Chand Sharma
S/o Shri Kanti Bhallabh Sharma
R/o H.No. 163, Gali No.5, Surpanchwada,
Mandavali, Fazilpur, Delhi-110092
C/o Delhi Offices and Establishment Employees
Union, BTR Bhawan, 13 Rouse Avenue,
New Delhi-110002 ….Workman

Versus

1. Punjab National Bank,
   Through its General Manager,
   Main Office Bikaji Kama Place,
   New Delhi-110066
2. Punjab National Bank,

Through its Branch Manager,
Patpatganj Branch, Patpatganj,
Delhi Managements.

Appearances:-

Shri Virender Kumar, Ld. A/R for the Claimant.
Shri Rajat Arora, Ld. A/Rfor the management

AWARD

This is an application filed u/s 2- A of the ID Act by the workman against the managements praying a direction to the managements to reinstate the workman into service with full back wages and all other consequential benefits.

As stated in the claim petition the workman had been working with the mgt as Peon/casual worker for 18 years since 1997. His last drawn salary was Rs.1400/- per month before his illegal termination on 08.04.2015. It has been stated that he was initially appointed with the Punjab National Bank IOAD and CDPC Department functioning in the Indian Express Building Bahadur shah Zafar Marg New Delhi. This office was subsequently shifted to Rajender Place and the workman was transferred to Rajender Place and employed in the Branch there and continued to work till 2008. While working in the office of the Bank at ITO and Rajender Place he was preparing tea and distributing the same to the officers other employees including some customers and was also providing drinking water as a part of his additional work along with the main work of distribution of Dak and other works of the peon. In the year 2008, he was posted in the Patpatganj Branch of the Bank where he was entrusted the exclusive work of a peon which included taking letters, documents, cheques, files etc. from one person to another, one section to another and to do all other works of the Bank as a peon. As a part of his duty, he was keeping the vouchers slips, cheques etc in order. He was also working as a sweeper and gradually became the most trusted employee of the Bank, as a result of which he was asked to keep the keys of the main doors of the Bank. As such, he was opening and closing the Bank building at 8AM in the morning and after the departure of the last employee. This fact is evident from the CCTV footage and the key register of the Bank. Though the workman was working honestly and diligently, he was not getting the minimum wage and other statutory benefits from the Bank. He was often getting assurance that his candidature for regularization shall be taken up at the first instance when opportunity would be available. On 20.10.2011, a fire accident occurred in the Branch. But for the bravery and courage including the presence of mind shown by the claimant, the property of the Bank could be saved and a letter of appreciation was issued to him. Initially, the claimant was receiving his remuneration through cheques and vouchers in the name of performing work under different names. This practice continued till the end of 2010. In the year 2011, the bank started paying his remuneration in his Bank account, though under the head of canteen subsidy, vehicle charges water charges etc. Being aggrieved for not getting minimum wage, and other benefits, the workman along with few other similarly placed persons wrote a letter to the CMD of the mgt Bank with a copy to the labour office requesting raising of salary. This action of the claimant caused annoyance in the mgt. On 21.01.2014 the workman wrote letters to the local MLA and the Deputy CM of Delhi which was forward by the deputy cm to the Bank mgt for consideration. This infuriated the mgt who in an action mood and summarily dismissed the service of the claimant with effect from 08.04.2015. At the time of termination though the claimant had completed 240 days continuous work in the calendar year preceding to the date of termination, no notice, notice pay or termination compensation etc. were paid to him. Though the claimant approached the mgt for taking him back to duty, it was not considered. Finding no other way he raised a dispute before the conciliation officer the but conciliation failed for the non cooperation of the mgt and thus the claimant filed the present application invoking the provision u/s 2A of the ID Act. Along with the claim petition the claimant had filed several documents.

The mgt of Punjab national Bank filed written statement denying the employer and employee relationship between the bank and the claimant. It has been stated that the claimant was a tea vonder and used to supply tea to the staff members at the branch of the Bank at Patpatganj, Delhi. He was being paid the price of the tea supplied to the staff. The mgt Bank provides a facility of canteen in the branch premises as a welfare measure and there is no statutory obligation for the bank to maintain the canteen. The claimant was never appointed as a peon of the Bank. No appointment letter was issued nor he was selected through the proper process of employment of a Nationalized Bank. The Hon'ble Supreme Court in the case of **State Bank of India and ors vs. SBI Canteen Employees Union** have a taken a clear view that in absence of a statutory/contractual obligation on the part of the Bank to run the canteen facility, no relationship as employee and employer is established between the mgt Bank and the various employees working with such canteen. Thus the mgt pleaded for dismissal of the claim petition on the ground that the claimant is not entitled to the relief sough for.

The claimant filed rejoinder denying the stand of the mgt. On these rival pleadings, the following issues were framed for adjudication.

Issues

1. Whether the termination of the claimant by the mgt is illegal and against the provisions of ID Act.
2. Whether the claim petition is not maintainable against the mgt in view of various preliminary objections.
3. Whether the claimant is entitled to reinstatement into service with back wages as claimant.

Before commencement of evidence the claimant filed an application invoking the provisions of Section 11(3) of the ID Act for a direction to the mgt to file the documents in possession of the mgt. The said petition was allowed as the mgt agreed to produce the petty cash book, the attendance register and the credit cash vouchers and the petition dated 29.03.2017 was allowed. The mgt took a plea that the other documents are not available. Thus liberty was granted to the claimant to adduce secondary evidence.

The claimant examined himself as ww1 and filed the documents which are the photo copies of the dispute raised before the Labour Commissioner, letter of appreciation issued to him after the fire incident the letters addressed to the customer directing to hand over the locker charges to the claimant whose signature was attested below the letter by the several cash credit vouchers, the register showing conveyance charge paid to the claimant, photo copy of the Bank statement paid to the claimant through his account, and many other similar documents. The mgt examined one of its official as MW1 who is the senior manager HRD, working for the bank. She produced an advertisement issued by the Bank for appointment of peons and a sample appointment letter and the ID cards issued to the peon as MW1/1 to MW1/3. The documents which the mgt had agreed to produce on the application of the claimant, were never produced by the mgt.

At the outset of the argument the Ld A/R for the mgt submitted that the claimant has to establish the employer employee relationship as well as the fact that he had worked continuously for more than 240 days in the calendar year for the mgt preceding the date of his alleged termination. But in this case, the claimant has miserably failed to establish both the aspect. As such, his claim is liable to be rejected. The counter argument advanced by the ld. A/R for the claimant is that the mgt is guilty of suppressing the material documents. The claimant had filed an application seeking production of the attendance register, petty cashbook and cash credit vouchers and many other documents. Though the mgt had agreed for production of the said documents which could have thrown light on the dispute, the mgt intentionally suppressed the documents. This is a litigation by the poor employee against the mighty employer. Thus, whatever document was available had been filed. The vital documents not being within the reach of the claimant, the burden cannot be shifted to the claimant for providing the employer employee relationship.

Finding

Issue no. 1 and 2

In his oral statement the claimant has stated that he was working in the Branch of the mgt as a causal worker since 1997 and continued for 18 years until his service was illegally terminated on 08.04.2015. He has narrated that initially he was employed in the IOAD and CDPC Department of the Bank functioning in the Indian Express Building. When that office was shifted to Rajender Place, like all other employees he was relocated to that place. In the year 2008 he was posted in the Branch of the Bank at Patpatgang, where he continued to work exclusively as a peon cum sweeper cum Duftri. The bank was giving him only 1400 rupees per months along various allowances. The claimant was often raising his demands for minimum wage and other facilities since he was working continuously as a casual workers. As a part of his duty he was performing the work of distribution of Dak papers and instrument of payments. At Patpat gang Branch, he was also entrusted to keep the key of the main door of the branch as a trusted employee of the Bank. On 20.10.2011 a fire accident occurred in that Branch. But for the exemplary courage shown by him the property of the Bank could be saved. Being satisfied the circle head of the Bank gave him a letter of appreciation. When everything was normal, the claimant to establish his legitimate demands made a presentation to the a local MLA and the Deputy Chief Minster of Delhi praying interference for regularization of his service. For this action, the Bank mgt became annoyed and terminated his service on 08.04.2015 without complying the provision of section 25F of the ID Act. To support his contention the claimant has filed the letter of appreciation issued to him by the circle head marked as ww1/2. This letter contains the appreciation of the higher authorities towards the work of the claimant in which he has been advised to serve the Bank with sincerity and honest in future. The letter has been addressed to the claimant in his official address that is Branch office Parpatganj and contains the seal of the Bank. The claimant has filed photo copy of documents marked as B,Cand D as the originals could not be produced. These are the correspondence made during the year 2014-15 which go to show that the claimant as staff of the Bank was deputed to the head officer to receive calendars and diaries for distribution among the customers, to receive the locker charges from a customer and the documents marked B also shows that his signature was attested by the branch manager authorizing him to receive the money from the customer. Several credit vouchers have been filed by the claimant showing payment of conveyance charges, refreshment charges and money paid for purchase of articles for the Bank to the claimant. In addition to that, the claimant has also filed the photo copy of his Bank statement as WW1/5 which shows credit of amount by the Bank in the account of the claimant under the head vehicle charges, water service charges canteen subsidy etc. By filing these documents the claimant has stated that he was working as a casual worker

in the bank for 18 years and discharging the duty as a peon cum sweeper. He was being relocated from one branch to another in course of time without break. The Ld. A/R for the claimant pointed out that during this period the claimant was signing the attendance register as any other employees of the Bank. But the bank mgt despite the direction from the Tribunal, intentionally suppressed the attendance register which could have been a direct evidence to establish the employer employee relationship. However, whatever documents were available the claimant has produced the same.

The witness examined as mw1 on behalf of the bank stated that the claimant was not an employee of the Bank but as an outsider he was supplying water and working as a tea vander in the branch of the Bank of Patpatganj. Hence, under no stretch of imagination, he can be treated as an employee of the Bank. While producing the sample advertisement sample appointment letter and the sample ID card of the peons employed in the bank as MW1/1 to MW1/3 the witness stated that the claim of the claimant is unfounded.

But this statement of the mw1 does not inspire confidence since during cross examination the witness stated in clear terms that she started working with the oriental bank of commerce in the year 2012. For the amalgamation of OBC with PNB in the year 2020, she is now working as the senior manager HRD in PNB. Her statement is on the basis of the information derived from record. She clearly admitted during cross examination that she was not posted in PNB at Patpatganj Bank when the claimant was working and when his service was allegedly terminated. Her information is based upon the records, which have not been produced by the mgt. She also expressed her ignorance about the payments made to the claimant on different heads and if the claimant was keeping the key of the branch. This unreliable evidence of the mgt witness leads to a conclusion that the claimant's evidence has not been rebutted in any manner by the mgt. The oral evidence of the claimant supported by the documentary evidence including the appreciation letter marked as ww1/2 proves that the claimant was working for the bank from 1997 to 08.04.2015 and during this period he was shifted from one office to another and his last place of work was the branch of the Bank at Patpatganj. This fact was known to the higher management of the bank and the circle head of the bank treated him as a person working in the branch in the bank at Patpatganj and this had issued the appreciation letter marked as ww1/2. Had the claimant not been a casual employee of the Bank the circle head would not have sent the appreciation latter in his address of the branch at Patpatganj nor he would have been entrusted the responsible work of collecting locker charges from the customers by the direction of the branch manager who had attested his signature for receipt of payment. The all other documents filed by the claimant clearly proves his relationship with the branch as its employee. But the bank in order to deprive him of his rights, was making payment from the suspension account under different heads like Canteen Subsidy water charges etc. The non production of the documents by the Bank strengthens the allegations of the claimant that he was subjected to unfair labour practice being denied regularization or service. Be it stated here the bank has miserably failed to prove its stand that the claimant was only engaged at Patpatganj Branch for as a tea vendor, whereas the bank statements filed by the claimant shows that he was getting remuneration form the Bank through his account in the year 2010-2011-2012 etc. being credited by the Bank. The documents marked as ww1/5 relates to the dates 31.01.2003 which was in the nature of a payment demanded by the claimant from the establishment head of the Bank office CDPC then functioning at Indian Express Building new Delhi. This document again leads to a conclusion that the claimant was working in the office of the bank functioning at Indian Express Building in the year 2003.

The claimant's assertion that he had worked for 240 days in the calendar year preceding to his illegal termination also stands proved for the oral testimony given which again stands unrebutted on account of non production of the attendance register. The bank could have produced the attendance register of the bank to show that the claimant was not signing the attendance register like the other employee of the Bank. Non production of the attendance register and the cash credit register leads to the conclusion that the bank having knowledge about the continues engagement of the claimant in the bank had intentionally suppressed the register in an attempt to disprove the stand of the claimant. These two issues are accordingly answered in favour of the claimant.

Issue no. 3

The claimant has prayed for setting aside the illegal termination and reinstatement into service. The ld. A/R for the mgt vehemently argued that the Punjab National Bank is a public sector bank having its own rules of recruitment. But no such rule has been filed except the sample advertisement and the sample appointment letter. These documents marked as mw1/1 and m1/2 are the recent document of the bank relating to the year 2021. No evidence has been adduced by the mgt to show that this procedure was in vogue when the claimant allegedly started working in the year 1997 and was being followed till 2015 when his service was allegedly terminated. Hence in this proceeding, the mgt though had the opportunity of disproving the stand of the claimant has failed to do so.

Thus from the totality of the evidence it appears that the claimant was subjected to unfair labour practice being engaged for work as a casual workers for a prolonged period and ultimately removed form engagement. In the case of **J and K Bank Limited vs. Central Government Industrial Tribunal and Others reported in 2018 LAB I.C. 2970 Hon'ble High Court of J and K** have held-

"Unfair Labour Practice-what amounts to-workman continued in temporary/contractual capacity for years together despite availability of vacant posts, aimed at depriving them of status and privileges of permanent workmen-clearly amounts to unfair labour practice-directions issued by Tribunal to appellant Bank to frame scheme for

regularization of respondents workmen within period of 3 months and that respondents workmen would be deemed to have been regularized in case of failure of appellant-Bank to frame scheme, held, justified."

In this case the oral and documentary evidence clearly proves that the claimant was working as a casual worker sine the year 1997 in different office of the bank till 08.04.2015 when his engagement was terminated. The claimant has alleged that the termination was illegal since he had worked for more than 240 days in the preceding calendar year. But the mgt failed to comply the provisions of section 25 F of the ID Act. This evidence of the claimant again stands unrebutted. Hence for non compliance of section 25 F of the ID Act. It is concluded that the engagement of the claimant was terminated illegally after employing him as a causal worker for long 18 years.

Now coming upon to decide, the benefits to which claimat is entitled to, reliance can be placed in the case of **Hari Nandan Prasad and Another vs. Emplooyer I/R to mamagement FCI reported in (2014)7SCC190**. In this case the Hon'ble Supreme Court have held that the power conferred upon Industrial Tribunal and Labour Court by the Industrial Dispute Act is wide. The act deals with Industrial Dispute, provides for conciliation, adjudication and settlement and regulates the right of the parties and the enforcement of the awards and the settlement. Thus, the act empowers the adjudicating authority to give relief which may not be permissible in common law or justified under the terms of the contract between the employer and the workman. While referring to the judgment of **Bharat Bank Limited vs. Employees of the Bharat Bank Limited reported in (1950) LLJ921 Supreme Court** the court came to hold that in setting the dispute between the employer and the workmen the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it consider reasonable and proper though, those may not be within the terms of any existing agreement. It can create new rights and obligations between them which it considers essential for keeping industrial peace.

Here is a case where as indicated above the claimant when made demand for regularization of service was made a victim of the illegal termination. Keeping the situation in view it is felt proper that an award should be passed directing the mgt to pay a lump sum amount as compensation to the workman which would be inclusive of the back wages instead of reinstatement since the evidence is not clear whether the bank is presently having a vacancy and the claimant has not attained the age of superannuation. Hence ordered.

ORDER

The claim petition be and the same is answered in favour of the workman. It is held that the action of the mgt in terminating the service of the claimant without complying the provisions of section 25F of the ID Act is illegal and the workman is entitled to reliefs sought for reinstatement. But considering the fact that the evidence is unclear if there exist any vacancies in the Bank and that the claimant has not attained the age of superannuation, it is directed that the mgt shall pay Rs. 5 Lakh as a lump sum amount towards compensation for the illegal termination of service to the claimant instead of the relief of reinstatement. This order will be carried out by the mgt within one month from the date when the award would become executable without interest failing which, the amount ordered shall carry interest @ of 6% per annum from the date of termination of the employment of the claimant and till the actual payment is made.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947. Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 4 जुलाई, 2023

का.आ. 1161.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, II- दिल्ली के पंचाट (48/2000) प्रकाशित करती है।

[सं. एल-12011/34/2000-आईआर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 4th July, 2023

S.O. 1161.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 48/2000) of the Cent.Govt.Indus.Tribunal-cum-Labour Court -II Delhi as shown in the Annexure, in the industrial dispute between the management of Allahabad Bank and their workmen.

[No. L-12011/34/2000- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 48/2000

Date of Passing Award- 15th May, 2023

Between:

The General Secretary,
All India Allahabad Bank Employees Asson.,
C/o Allahabad Bank, Baroda House,
New Delhi-110001 ….Workman.

Versus

The Dy. General Manager,
Allahabad Bank, 17-Parilament Street,
New Delhi-110001 ….Management.

Appearances:-

Shri R.S Saini, Ld. A/R for the claimant.
Ms. Kittu Bajaj, Ld. A/R for the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. The Dy. General Manager,and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12011/34/2000(IR(B.II)) dated 12.05.2000 to this tribunal for adjudication to the following effect.

> "**Whether the action of the management of Allahabad Bank, New Delhi not holding the bi-partite meeting with representatives of All India Allahabad Bank employees Asson. Affiliated to national confederation of Bank employees is legal and just? If not, then what direction is necessary to the management?"**

As per the narrative in the claim statement All India Allahabad Bank Employees' Association (AIABEA), here represented by it's Gen Secy, is a Regd Trade Union having it's registered office at Calcutta West Bengal. The said Association is having it's units all over India and representing a majority No of employees of Allahabad Bank. The said Association is affiliated to the National Confederation of Bank Employees at the Apex level representing the Employees of different Banks and party to negotiation for the service conditions of the employees with the Indian Bank Association a representative body of the Banks in India. The claimant Association having members all over India attempts to settle/ solve the problems of the employees by way of bi partite discussion. But the Management of Allahabad Bank , in an arbitrary and discriminatory manner is not allowing the claimant Association to participate in the bipartite discussion as a result of which the grievance of the members are piling up without resolution leading to mass discontentment. On the other hand, the management of Allahabad Bank is allowing the minority unions and the rival unions, which are not even the Regd Trade Unions to participate in the discussion. By naming few other unions describing those as rival, un registered and minority unions, the claimant has asserted that the Management of Allahabad Bank for it's discriminatory attitude have subjected the claimant union to unfair labour practice. All the oral and written request for opportunity to participate in the discussion were turned down by the management. Though as per the clauses of Shastri Award, the unions which are the Regd Trade Unions and fulfill the requirements of Trade Union Act are only to be allowed to represent the cause of the employees and hold bi lateral talks, the Management in gross violation of the direction and guidelines issued is not allowing the office bearers of the claimant Association to put forward the grievance of the members of the union for harmonious resolution. Such decision of the Management Bank is forcing the employees to more and more litigations under the ID Act and other laws.

Being aggrieved the Association had raised a dispute in this regard, before the conciliation officer on 13.06.1997 and the management filed objection. But no agreement could be arrived at and the appropriate Govt. referred the dispute to this Tribunal for adjudication in terms of the Reference. Thus a prayer has been made for a direction to the Management to hold bi lateral discussion with the claimant Associationfor harmonious resolution of the grievances of the employees who are the members of the said association and further held that the refusal of the management to allow the claimant Association for such discussion is illegal.

The Management Bank filed written statement denying the claim advanced. It has been stated that the management has a majority recognized union i.e. All India Allahabad Bank Employees Coordination Committee

which has been given the status of sole bargaining authority. The claimant union is neither the majority union nor the recognized union by the management. It has further been stated that the management has a separate scheme for redressal of the individual grievances of the employees. More over the All India Allahabad Bank Employees Coordination Committee is the only recognized union and the coordinating body of their state units affiliated to them and registered under the Trade Union Act. The proof of their majority is determined every year on the basis of the check off facilities provided to all the registered Trade Unions operating in the Allahabad Bank. Recognition is accorded to them by issuing letter. Though the claimant union is a registered union under the Trade Union Act, the same not being the recognized union of the Management Bank is not authorized to hold talks on bi partite settlement. The All India Allahabad Bank Employees Coordination Committee being the majority recognized union since 1971 is enjoying overwhelming majority and it's participation in settlement talks is legal and justified. Thereby the management has described the demand of the claimant union as illegal and liable to be dismissed.

Rejoinder was filed refutting the stand of the Management Bank. While calling upon the Management to prove the facts pleaded it has been stated that the All India Bank Employees Association, for example is not registered under the Trade Union Act, but is allowed by the management to participate in the talk on settlement. The claimant union is duly recognized by the Indian Bankers' Association and a party to the negotiation for service condition and wage structure of the bank employees. Hence it has a statutory right to participate in the settlement talks between the employees and the management. But the Management Bank has adopted the illegal practice of choosing the un registered and un recognized unions according to it's sweet will for negotiation on general issues and to allow the said union's participation during bi partite settlement.

On these rival pleadings the following issues were framed.

ISSUES

1- whether the claimant has locus standi to raise the claim.

2- 2- whether there is efficacious remedy to solve the dispute and the action of the Management is legal and justified in view of the objection by the management.

3- As in terms of reference.

On behalf of the claimant Sh R S Saini, the president of the claimant union testified as WW1. He stated to be the ex General Secy of the said union. He proved several documents marked as WW1/1 to WW1/6, besides adducing oral evidence. The documents filed and relied by the claimant union are the copies of the meetings held by the Bank Management on different dates with Allahabad Bank Indian Staff Association and All India Allahabad Bank Employees Coordination Committee Indian which are not the Registered Trade Unions. The said documents have been placed on record as Ext 1/1 to Ext 1/5. Ext 1/6 is a communication by the claimant union with the management post this proceeding requesting to allow participation in IRM. The management Bank examined one of it's chief Manager P.B.Kekre as MW 1. No documents were filed by the management. Both the witnesses were cross examined at length.

At the outset of the argument the learned counsel for the Management submitted that Allahabad Bank has lost it's identity for merger of the same with Indian Bank w. e. f. 1st April 2020. Hence on that reason alone the claim is liable to be dismissed. She also argued that in this proceeding the burden lies with the claimant to prove itself as the recognized majority union and to establish that the unions participating in the negotiation are the minority and un registered unions as claimed by the claimant. There being no evidence to that effect, the claimant has failed to discharge the said burden. She also submitted that the stand taken by the management is based on assumption only. The complain that it has been denied participation in the negotiation is wrong as evident from their own pleading. In the claim petition it has been stated that the claimant association is affiliated to the National Confederation of Bank employees at the Apex level. Drawing attention of the Tribunal to several Bipartrite Settlements, she submitted that the Apex Body of the claimant Association is participating in the negotiations and settlements. Hence it can not be said that the participation has been denied to the claimant Association. If at all it has any grievance regarding participation it can raise the same with it's Appex Body. The management Bank holds discussion with the recognized majority union only and not with all the Unions.

The counter argument of the claimant is that the un recognized union may not have the right to participate in the process of collective bargaining with the management/ employer on the issues concerning the employees in general. But they have the right to meet and discuss with the employer or any person appointed by him on issues relating to grievance of any individual member. In support of the contentions, reliance has been placed by the claimant in the case of **Chairman of SBI&Anothervs All Orissa StateBank Officers' Association and Others, 2002(4) SCALE, 423,** decided by the Hon'ble High court of Orissa.

Findings

All Issues

All the issues being inter dependent are taken up for consideration together. The claimant has alleged that it the majority union of the Allahabad Bank employees having it's unit all over India and the Head office is located in Kolkata West Bengal. No document has been placed on record about the no of units across the country or the membership no to prove it to be a majority union. Similarly no evidence has been adduced to prove that the unions allowed to participate in the collective bargaining or negotiation are not registered under the Trade Union Act. The management has stated that the claimant union is not a recognized union.

It is a fact beyond dispute that there are multiple Trade Unions having the employees as their members. But the Bank has framed Rules to negotiate with the recognized unions only and the recognition is granted after assessment of the membership strength each year. The witness examined on behalf of the claimants who is none but the President of the claimant union has not stated a word as to how it claims to be a majority union. On the contrary the witness admitted during cross examination that the claimant union had never forwarded the names of the elected office bearers of the union to the registrar of Trade Union though the last election was held in Nov 2016 at Calcutta.The witness failed to mention who are the office bearers now. There is also no evidence if the claimant union is in existence after the merger of Allahabad Bank with Indian Bank in April 2020.

The witness examined by the management stated that the All India Allhabad Bank Employees Coordination Committee being the majority union participates in the negotiation and bipartite settlement which is applicable to all Bank employees. Hence it is not desirable in the interest of the employees that all the unions should be allowed to participate, which will lead to conflict of interest only.

Of course the learned AR for the claimant argued that the minority union is legally authorized to represent the case of individual employees. While accepting the said contention of the claimant, it is observed that the Management Bank has evolved a mechanism in the nature of a scheme to address the grievance of the Individual employees at the Head office as well as Regional office levels. The scheme is operating effectively. Hence there is no need of entertaining the unions for the said purpose.

From the oral and documentary evidence it is not established by the claimant that it is a majority union or the recognized union of the Bank. Since the bank has a rule of allowing participation of recognized majority union only for collective bargaining and Bipartite settlement, the claim advanced by the claimant seems not justified and the Bank can not be held liable or dealing unfairly with the claimant Union. It is not out of place to mention that the claimant has not placed on record to establish that the said union is existing and active even after merger of Allhabad Bank with Indian Bank w. e. f. April 2020. Taking all these aspects in to consideration, it is held that the claimant has miserably failed to establish the claim and accordingly, the claim is answered against the claimant. Hence ordered.

ORDER

The reference be and the same is answered against the claimant and it is held that the claimant union is not entitled to the relief sought for.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 4 जुलाई, 2023

का.आ. 1162.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नैशनल बैंक के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, II-दिल्ली के पंचाट (159/2012) प्रकाशित करती है।

[सं. एल-12012/21/2012-आई आर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 4th July, 2023

S.O. 1162.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 159/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court -II Delhi as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-12012/21/2012- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 159/2012

Date of Passing Award- 17.04.2023

Between:

Shri Sharad Kumar,
Through Sunita Garg Legal Heirs
S/o Shri Om Prakash,
House No. Gali No.3 Prempuri Colony,
Near Mittal Nursery,
Bheta Road, Saharanpur, U.P. ….. Workman

Versus

1. The Circle Head,
   Punjab National Bank,
   Circle Office, Muzaffar Nagar,
   Uttar Pradesh

2. Disciplinary Authority,
   Punjab National Bank,
   Circle Office, Muzaffar Nagar,
   Uttar Pradesh … .Managements

Appearances:-

Claimant in person
Sh. Rajat Arora, Ld. A/R for the management.

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of (i) The Circle Head, Punjab National Bank, (ii) Disciplinary Authority, Punjab National Bank, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12012/21/2012-(IR(B-II) dated 22/11/2012 to this tribunal for adjudication to the following effect.

> **"Whether the action of management of Punjab National Bank in awarding the punishment of 'Removal from service with superannuation benefits' to Shri Sharad Kumar vide Order dated 25.09.2009, is legal and justified? What relief the concerned workman is entitled to?"**

This order deals with the grievance of the claimant (since dead and substituted by the legal heir Smt. Sunita Garg the wife of the deceased and their four children as per order dt 7th April 2022) with regard to the punishment imposed on him in the domestic inquiry which he describes as unreasonably disproportionate to the charge leveled .

In order to deal with the dispute, it is necessary to set out the relevant facts as per the claim statement in detail.

The claimant was initially appointed as a Daftari/Peon of the Management Bank on 22.04.1985 and was a regular employee. In course of time he was promoted to the next higher posts and in the year 2007 he was working as the head cashier in the branch of the Bank at Ghunna Maheswari. On 30/08/2007 he was placed under suspension in contemplation of a disciplinary action on he allegation / complaint received from the customers of the Bank relating to misappropriation of the money deposited by the customers. There was also allegation of illegal money lending by the claimant. On 11.12.2007, the charge head containing seven district and separate charges was served on the claimant and he was called upon to explain the charges and submit his reply. The reply submitted by the claimant was found un satisfactory and the authorities decided to ensue the domestic inquiry against him. During the inquiry the Bank as well as the claimant as the charged employee adduced their evidence and after considering the same the enquiry officer, on 29.09.2009, submitted his report finding that the charges against the charge sheeted employee stands proved. The disciplinary authority served the report of inquiry on the claimant and called upon his explanation which was again found not satisfactory. Hence for the financial irregularities committed by the claimant, the disciplinary authority imposed the punishment of removal from service with superannuation benefits. The said order is under challenge in this proceeding. The grievance of the claimant is that the inquiry was not conducted in accordance with the principles of natural justice and the procedure prescribed in the Bi partite settlement was not followed. Not only that the

punishment awarded was disproportionately harsh and high. Hence the claimant has made a prayer to set aside the order of the disciplinary authority.

The management Bank had filed written statement denying the stand taken in the claim petition. It has been stated that the allegation was matters of record and the inquiry was conducted fairly by following the principles of natural justice. The claimant had all along participated in the inquiry and the charges against him were proved. The explanation offered by the claimant was not accepted as satisfactory and the disciplinary authority had rightly passed the order which needs no interference.

On the basis of the pleadings, this Tribunal framed altogether three issues and the issue no 1 relating to the fairness of the Domestic inquiry was heard and considered as a preliminary issue.

The tribunal after considering the materials placed on record and the evidence adduced by both the parties, by order dt13.10.2022, came to hold that the domestic inquiry was conducted in accordance to the Rule and procedure and principles of natural justice were also followed during the inquiry. The issue no1 was accordingly decided against the claimant and it was directed that both the parties shall advance argument on the proportionality of the punishment imposed. Hence extensive argument was advanced by the learned AR for the Bank Management to establish that the punishment imposed on the claimant commensurates the charge of mis conduct on account of financial irregularities.

Whereas the learned AR for the Management supported the order imposing punishment as proper, the claimant has described the same as extremely harsh. It was also argued that for the said punishment the claimant was denied the benefits for the remaining years of his service which had caused huge financial loss in terms of salary and pension.

In this case the cla

This tribunal in view of the arguments advanced has to give a finding on the proportionality of the punishment imposed on the claimant. In the case of **Muriadih Colliery VS Bihar CoallieryKamgar Union (2005) 3 SCC331,**The Hon'ble SC have held

"it is well-established principle in law that in a given circumstance, it is open for the Industrial Tribunal acting u/s 11-A of the I D Act 1947 to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the tribunal decides to interfere with such punishment awarded in domestic inquiry, it should bear in mind the principle of proportionality between the gravity of the offence and stringency of the punishment."

Whether a misconduct is severe or otherwise depends on the facts of each particular case. In a case where the charge is about misappropriation of public money or breach of Trust, no doubt the same is serious in nature and distinguishable from the charge of demeanor or in subordination as in this case. In this caseduring the relevant time, the claimant was serving as the head cashier of a Nationalized Bank. The business of the bank thrives on the Trust of the customers and the flawless service provided. In this case the charge against the claimant is that, he between 02/07/2007 to 25/07/2007, though received certain amount from the customers for deposit in their account and granted receipts, the amount was not deposited in the respective accounts and vouchers to that effect are not available in the Branch. Not only that transactions of huge amounts in his and his wife's account were noticed during that period, which the claimant failed to explain during the domestic inquiry. More over the finding in the relevant inquiry is based upon documentary evidence which are the transaction related documents of the Bank and oral evidence too.

In the case of **Regional Manager U.P.S R TC, Etawah & others VS Hotilal and another,2003(3) SCC 605, reffered in a later case of U.P.SRTC VS Nanhelal Kushwaha(2009) 8 SCC, 772,** the Hon'ble Appex Court have held that "The court or Tribunal while dealing with the quantum of punishment has to record reason as to why it is felt that the punishment inflicted was not commensurate with the proved charge. A mere statement that the punishment is not proportionate would not suffice. It is not only the amount involved ,but the mental set up, the type of the duty performed and similar relevant circumstances, which go into the decision making process are to be considered while deciding the proportionality of the punishment awarded. If the charged employee holds a position of trust, where Honesty and Integrity are in built requirements of functioning, it would not be proper to deal with the matter leniently."

As stated in the preceding paragraph, the allegation against the claimant was of misconduct on account of financial irregularities. The admitted evidence is that before initiation of domestic inquiry and placing the claimant under suspension in contemplation of the inquiry, a fact finding inquiry was conducted by the Bank and the officer of the Bank had met the customers whose money was allegedly mis appropriated by the claimant and not deposited in their account though receipt of deposit were granted to the by the claimant under his signature. The evidence on record of course shows that the amount were later refunded and the customers during the Domestic inquiry, examined as defence witnesses stated to have got back the amount. But the said statement of the customers do not absolve the claimant of the charge as has been rightly held by the inquiry officer of the Domestic Inquiry.

The learned AR for the management relied upon the judgment of the Hon'ble SC in the case **of M/S Firestone Tyre and Rubber Co of India vs The Management And Others** to argue that the discretion vested in the

Tribunal u/s 11-A should be judiciously exercised. The crux of his argument is that the punishment imposed on the claimant is appropriate to the charge and the Tribunal should not interfere.

The learned AR for the claimant on the other hand argued on the legislative intention behind incorporation of sec 11A of the Act. By placing reliance in the case of **ML Singlavs Punjab National Bank,AIR 2018 SC 4668,** submitted that in the said judgment the Hon'ble SC have held that even if the issue relating to the fairness of the inquiry is decided in favour of the employer, even then the Tribunal has to consider if the punishment commensurate the charge.

In this case the evidence adduced before this Tribunal reveals that the alleged occurrence is about mis appropriation of the money of the customers. The same has deeply impacted the reputation of the Bank and it's business. The conduct of the claimant as stated by the Management led to loss of confidence of the employer.In such a situation the imposition of punishment appears to be proportionate and commensurate the charge. It can not be held as a harsh punishment as the claimant at the time of removal from service was allowed all superannuation benefits. Hence ordered.

ORDER

The reference be and the same is answered against the claimant. It is held that the punishment of Removal from service with superannuation benefits as imposed on the claimant by the management is just, legal and commensurate the charge and the claimant is not entitled to the benefits claimed.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 4 जुलाई, 2023

का.आ. 1163.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नैशनल बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, II-दिल्ली के पंचाट (125/2012) प्रकाशित करती है।

[सं. एल-12011/114/2012-आईआर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 4th July, 2023

S.O. 1163.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 125/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court -II Delhi as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-12011/114/2012- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 125/2012

Date of Passing Award- 17.04.2023

Between:

The Generaly Secretary,
PNB Employees Union (U.P)
Swati Villa, M-191-A, Ashiana Colony,
Kanpur Road, Lucknow-226012 ….Workman

Versus

The Circle Head,
Punjab National Bank,
Circle Office, Meerut (U.P) ….Management

Appearances:-

Shri N.C Gupta, Ld. A/R for the claimant.
Shri Rajat Arora, Ld. A/R for the Management.

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of (i) M/s The Circle Head, Punjab National Bank, Circle Office, Meerut (U.P), and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12011/114/2011-(IR(B-II)) dated 20/07/2012 to this tribunal for adjudication to the following effect.

"Whether the action of management of Punjab National Bank in awarding the punishment discharge from service with superannuation benefits to Shri Neeraj Chaudhary S/o late D.P.S Chaudhary vide order dated 31.03.2006 is legal and justified? What relief the concerned workman is entitled to?"

This order deals with the grievance of the claimant with regard to the punishment imposed on him in the domestic inquiry which he describes as unreasonably disproportionate to the charge leveled.

The facts as pleaded by the claimant is that, he was initially appointed as a clerk cum cashier of the Management Bank on 05/10/1987 and was posted in different branches . On 26.04.2004, he was posted in the branch of the Bank at Bhagpat Road Merrut. On that day he was placed under suspension in contemplation of a disciplinary action, on he allegation / complaint received from the customers of the Bank relating to misappropriation of the money deposited by the customers and deposited by them in the counter of the Bank. It was found that the claimant being the cashier, though had received the money from the customers, did not enter the same in the book of the Bank. The order of suspension was followed by the charge sheet served on the claimant and he was called upon to submit his reply.

The reply submitted by the claimant was found un satisfactory and the authorities decided to ensue the domestic inquiry against him. During the inquiry the Bank as well as the claimant as the charged employee adduced their evidence and after considering the same the enquiry officer, on 16.02.2005, submitted his report finding that the charges against the charge sheeted employee stands proved. The disciplinary authority served the report of inquiry on the claimant and called upon his explanation which was again found not satisfactory. Hence for the financial irregularities and misconduct committed by the claimant, the disciplinary authority imposed the punishment of discharge from service with superannuation benefits on him. The said order is under challenge in this proceeding.

The grievance of the claimant is that the inquiry was not conducted in accordance with the principles of natural justice and the procedure prescribed in the Bi partite settlement was not followed. Not only that the punishment awarded was disproportionately harsh and high. Hence the claimant has made a prayer to set aside the order of the disciplinary authority.

The management Bank had filed written statement denying the stand taken in the claim petition. It has been stated that the allegations were matters of record and the inquiry was conducted fairly by following the principles of natural justice. The claimant had all along participated in the inquiry and the charges against him were proved. The explanation offered by the claimant was not accepted as satisfactory and the disciplinary authority had rightly passed the order which needs no interference.

On the basis of the pleadings, this Tribunal framed altogether two issues and the issue relating to the fairness of the Domestic inquiry was heard and considered as a preliminary issue.

The tribunal after considering the materials placed on record and the evidence adduced by both the parties, by order dt26.03.2019, came to hold that the domestic inquiry was conducted in accordance to the Rule and procedure and principles of natural justice were also followed during the inquiry. The issue relating to the fairness of the inquiry was accordingly decided against the claimant observing that principles of natural justice was not violated during the inquiry and it was directed that both the parties shall advance argument on the proportionality of the punishment imposed. Hence extensive argument was advanced by the learned A/R for the Bank Management to establish that the punishment imposed on the claimant commensurates the charge of mis conduct on account of financial irregularities. The learned AR for the claimant argued to the contrary.

Whereas the learned AR for the Management supported the order imposing punishment as proper, the claimant has described the same as extremely harsh. It was also argued that for the said punishment the claimant was denied the benefits for the remaining years of his service which had caused huge financial loss in terms of salary and pension

This tribunal in view of the arguments advanced has to give a finding on the proportionality of the punishment imposed on the claimant. In the case of **Muriadih Colliery VS Bihar CoallieryKamgar Union (2005) 3 SCC331,**The Hon'ble SC have held

"it is well-established principle in law that in a given circumstance, it is open for the Industrial Tribunal acting u/s 11-A of the I D Act 1947 to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the tribunal decides to interfere with such punishment awarded in domestic inquiry, it should bear in mind the principle of proportionality between the gravity of the offence and stringency of the punishment."

Whether a misconduct is severe or otherwise depends on the facts of each particular case. In a case where the charge is about misappropriation of public money or breach of Trust, no doubt the same is serious in nature and distinguishable from the charge of demeanor or in subordination as in this case. In this case during the relevant time, the claimant was serving as the head cashier of a Nationalized Bank. The business of the bank thrives on the Trust of the customers and the flawless service provided. In this case the charge against the claimant is that, he between 02/07/2007 to 25/07/200, though received certain amount from the customers for deposit in their account and granted receipts, the amount was not deposited in the respective accounts and vouchers to that effect are not available in the Branch. Not only that transactions of huge amounts in his and his wife's account were noticed during that period, which the claimant failed to explain during the domestic inquiry. More over the finding in the relevant inquiry is based upon documentary evidence which are the transaction related documents of the Bank and oral evidence too.

In the case of **Regional Manager U.P.S R TC,Etawah&others VS Hotilal and another,2003(3) SCC 605, reffered in a later case ofU.P.SRTC VS NanhelalKushwaha(2009) 8 SCC, 772,** the Hon'ble Appex Court have held that "The court or Tribunal while dealing with the quantum of punishment has to record reason as to why it is felt that the punishment inflicted was not commensurate with the proved charge. A mere statement that the punishment is not proportionate would not suffice. It is not only the amount involved ,but the mental set up, the type of the duty performed and similar relevant circumstances, which go into the decision making process are to be considered while deciding the proportionality of the punishment awarded. If the charged employee holds a position of trust, where Honesty and Integrity are in built requirements of functioning, it would not be proper to deal with the matter leniently."

As stated in the preceding paragraph, the allegation against the claimant was of misconduct on account of financial irregularities. The admitted evidence is that before initiation of domestic inquiry and placing the claimant under suspension in contemplation of the inquiry, a fact finding inquiry was conducted by the Bank and the claimant was found involved in mia appropriation of the public money since in the capacity of cashier, though he had received cash from the customers of the Bank did not deposited the same in their account even after the receipt of deposit were granted to them by the claimant under his signature.

The learned AR for the management relied upon the judgment of the Hon'ble SC in the case **of M/S Firestone Tyre and Rubber Co of India vs The Management And Others** to argue that the discretion vested in the Tribunal u/s 11-A should be judiciously exercised. The crux of his argument is that the punishment imposed on the claimant is appropriate to the charge and the Tribunal should not interfere.

The learned AR for the claimant on the other hand argued on the legislative intention behind incorporation of sec 11A of the Act. By placing reliance in the case of **ML Singlavs Punjab National Bank,AIR 2018 SC 4668,** submitted that in the said judgment the Hon'ble SC have held that even if the issue relating to the fairness of the inquiry is decided in favour of the employer, even then the Tribunal has to consider if the punishment commensurate the charge.

In this case the evidence adduced before this Tribunal reveals that the alleged occurrence is about mis appropriation of the money of the customers. The same has deeply impacted the reputation of the Bank and it's business. The conduct of the claimant as stated by the Management led to loss of confidence of the employer. In such a situation the imposition of punishment appears to be proportionate and commensurate the charge. It can not be held as a harsh punishment as the claimant at the time of removal from service was allowed all superannuation benefits. Hence ordered.

ORDER

The reference be and the same is answered against the claimant. It is held that the punishment of discharge from service with superannuation benefits as imposed on the claimant by the management is just, legal and commensurate the charge and the claimant is not entitled to the benefits claimed.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 4 जुलाई, 2023

का.आ. 1164.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वरिष्ठ प्रबंधक, राष्ट्रीय ताप विद्युत निगम,एन.टी.पी.सी., रामगुंडम, करीमनगर, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री जी. भास्कर, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-हैदराबाद पंचाट (संदर्भ संख्या L.C.No. 65/2010) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-148-आई आर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 4th July, 2023

S.O. 1164.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. L.C.No.No. 65/2010) of the Central Government Industrial Tribunal cum Labour Court – Hyderabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Senior Manager, The National Thermal Power Corporation, N.T.P.C., Ramgundam, Karimnagar, and Shri G. Bhaskar, Worker, which was received along with soft copy of the award by the Central Government on 27.06.2023.

[No. L-42025-07-2023-148- IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM- LABOUR COURT AT HYDERABAD

Present: - Sri IRFAN QAMAR**,** Presiding Officer

Dated the 21st day of June, 2023

INDUSTRIAL DISPUTE L.C.No. 65/2010

Between:

Sri G. Bhaskar,
S/o G. Swamy,\R/o A-2/15, PTS, N.T.P.C.,
Jyothi Nagar, Fertilizer City,
Karimnagar Dist. ..……Petitioner

AND

The Senior Manager,
(Sri M. Balasundaram)
The National Thermal Power Corporation,
N.T.P.C., Ramgundam
Karimnagar District. ….Respondent

Appearances:

For the Petitioner : M/s. Abdul Khader,G, P. Suresh Kumar, Parveen Naz, N. Mahendar & A. Sanjeeva Narayan, Advocates

For the Respondent: M/s. G. Vidya Sagar, K. Udaya Sri & P. Sudheer Rao, Advocates

AWARD

Sri G Bhaskar who worked as Junior Assistant Grade-III (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondent M/s. National Thermal Power Corporation seeking for declaring the proceeding dated 18/2/2010 issued by Respondent as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting

all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

It is submitted that Petitioner Sri G.Bhaskar was working as Junior Assistant Grade-III in NT.P.C.. Ramagundam and was terminated from services by the Respondent on 14.2.2010. The petitioner has submitted two representations on 22.2.2010 and 20.4.2010 requesting the management to permit him to join duties but the management vide letter No. 09:HR:EBG:/656 dated 4.10.2010 has not permitted the petitioner to join duties and his name was struck off from the rolls of the Corporation thus terminated him from services. The petitioner submits that since the date of his joining into the Respondent Corporation on 22.7.1992 he has been maintaining good record of service till he was terminated from the services by the Respondent. The Petitioner submits that while he was on duty as on 14.11.2007, on 15.11.2009, he was trapped in a Criminal case which was wholly stage-managed and foisted on him with ill-motives to defame him in the Corporation. The petitioner submits that the Corporation had issued four letters on 30.11.2009, 22.1.2010, 1.2.2010 and on 6.2.2010 followed by a letter dated 18.2.2010 terminating his services with effect from 14.2.2010. The petitioner submits that he had replied to the letter dated 18.2.2010 but he could not reply other letters due to fear of his arrest in a fabricated case. There was no intention of the petitioner to cause inconvenience to the Corporation or he wantonly or deliberately avoided to give replies to the above stated letters. As on the day of appearance before the Corporation Committee on 1.7.2010 it was very clearly and vividly explained to the officials and to the Committee. But the Committee failed not to analyze the entire gamut and the fear psychosis thus created by the police by hunting the Petitioner day and night to apprehend him on false and fictitious case to which he was not connected at all. It is submitted that after the receipt of the letter dated 4.10.2010 the petitioner has approached the officials in the Corporation as also through Union representatives for re-consideration but no tangible results could come forth except the Corporation maintained a stoic silence on his termination. The petitioner submits that due to continuous watch and vigil of the police to arrest him at the instance of vested interested individuals who were instrument in irking him in the criminal trap, he could not either replied to a few letters and appeared in person to report to the office of the Corporation what actually had transferred. For the apprehension of arrest and the police would further entangle the petitioner in some offences, he virtually kept himself away from the services and the office. The petitioner pleads that due to unforeseen trap and abnormal situation which prevented the petitioner not to follow the rules and regulations to remain on leave with intimation is indeed against the rules but attracting the clause 24.9 of N.T.P.C. Service Rules is very much on the high side violating the fundamental principles and principles of natural justice. The petitioner submits that in view of the situation beyond his capacity, he had to remain on leave and the attitude and the decision of management to terminate the services of the petitioner is an overdose medicine to the patient. It is submitted that service Rules 24.9 states that :

"Provided, however, if the employee subsequently substantiates and accounts for his/her unauthorized absence from duty within 90 consecutive days from the date of the termination order to the entire satisfaction of the management, the management may regularize his/her period of unauthorized absence on such terms and conditions as it may deem fit and proper"

According to which the respondent may regularize his period of unauthorized absence on such terms and conditions. It is submitted that the respondent can rescind their termination orders and reinstate the Petitioner with all the benefits. The petitioner submits that his previous record has been good and it has been appreciated by the higher-ups with whomever he worked and the request of the petitioner for re-consideration would have been acceded to by the Corporation as one time basis. The petitioner is from BC Community without having any other source of income and as he has two children, wife and dependent mother and father and as he is only a bread-winner, his family would have to face innumerable financial stress and strains. The petitioner submits that he has not approached any forum for the relief sought herein. The petitioner prays that the act of the respondent in terminating him from the services on 14.2.2010 and confirmed by the Committee on 4.10.2010 is against the principles of natural justice and it is illegal and arbitrary and prayed to direct the Respondent/Corporation to reinstate the petitioner into the services with continuity of service, paying back wages and all other attending benefits.

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows**:

It is submitted that the Respondent herein denies various averments made in the claim statement except those, which are specifically admitted herein. t is submitted that the Respondent is a largest power generation company set up in the Country to accelerate power development. It is having one of its Units at Ramagundam. The persons engaged in the Respondent Corporation are governed by the Service Rules known as NTPC Service Rules. The Petitioner is governed by the provisions of Service Rules. As per Rule 24.9 of the Service Rules, read as follows:

24.9 Termination on account of unauthorized absence:

"An employee who remains unauthorizedly absent from duty or place of work either without sanction of any leave or after expiry of sanctioned leave, if any, and does not report for duty for any reason whatsoever within 90 consecutive

days from the date of his/her unauthorized absence, shall automatically lose lien on his/her post and he/she shall be deemed to have voluntarily abandoned and left the service of the Corporation without notice."

The Petitioner joined in NTPC as Junior Assistant (Accounts) Trainee on 22.07.2002. The Petitioner abstained from duties since 16.11.2009. There was no communication from him with regard to his absence from duties. Therefore, he was addressed a letter No. 09/HR/DISC/ 2009/325264, dated 30.11.2009 that his absence is unauthorized and was advised to report for duty immediately. This notice was followed by letters dated 22.1.2010 and 1.2.2010, and 6.2.2010. He was also informed of the clause 24.9 of NTPC service rules. Since, the Petitioner has not reported for duty even after expiry of 90 days i.e., 13.2.2010, he was addressed a letter No. 24/2010, dated 18.2.2010 that his name is strike off from the rolls of the company w.e.f. 14.2.2010 in terms of Clause 24.9 of the NTPC Service Rules, R/w. 27 (3) of the Standing Orders of NTPC, Ramagundam. The Petitioner vide letter dated 22.2.2009 communicated that he was involved in a false case registered in NTPC Police Station and that he is trying for anticipatory bail on the file of Hon'ble High Court and requested to withhold the termination. On coming to know that the Petitioner is at District Jail at Karimnagar, another copy of letter dated 18.2.2010 was forwarded to Superintendent, District Jail, Karimnagar with a request to furnish the same to the Petitioner. The Petitioner on receipt of the letter on 27.3.2010 addressed a letter dated 28.4.2010 requesting to revoke letter dated 26.2.2010 and permit him to join duty. It is submitted that in terms of clause 27 (3) and standard procedure prescribed, a Committee was constituted for examining the case of the Petitioner. The Committee in its meeting on 1.7.2010 heard the contention of the Petitioner and considered the relevant record. Thereafter, the Committee submitted a report dated 27.8.2010 that the Petitioner failed to establish the genuine reasons for his absence and also that intentionally he did not explain the reasons within stipulated time. Therefore, the committee not recommended for revoking the termination orders and his request for rejoining of the duty was also not recommended. The competent authority vide proceedings dated 4.10.2010 communicated the Petitioner that he failed to establish the genuine reasons for his absence and request for rejoin the duty cannot be considered. Thus, the Petitioner is not entitled to any relief, much less the relief as prayed in the claim statement. It is submitted that the Petitioner joined the service as Junior Assistant (Accounts) Trainee on 22.07.2002. The averment that he has been maintaining good record till his termination is incorrect and the same is specifically denied. The Petitioner on earlier occasion also was involved in an incident of suicide case of late G.Jagadishwar, Employee No. 32404, Ex. Employee of F&A Department, wherein the deceased had mentioned name of the Petitioner in his suicide note. The Petitioner remained absent from 16.11.2009 unauthorizedly. The averment that the Petitioner was trapped in a Criminal case is misconceived. His letter dated 22.2.2009 (received on 24.2.2010), the Petitioner for the first time informed that, he was involved in a case registered in NTPC P.S. and that he is trying for anticipatory bail, therefore, mere registration of a case does not come in the way of Petitioner in remaining absence to duties without intimation or prior approval from competent authority. It is submitted that the Petitioner was issued with letters to all the addresses available with the Corporation. He did not reply to the letters except the letter dated 18.2.2010. Therefore, the Petitioner admittedly violated clause 24.9 of NTPC Service Rule and Office Order No. 24/2010, Dated 18.2.2010 is perfectly legal and justifiable. His name was strike off from the roll of the Corporation w.e.f. 14.2.2010 in terms of Clause 24.9 of NTPC Service Rules and Clause 27 (3) of the Standing Orders of NTPC-Ramagundam. It is submitted that the Corporation evolved a procedure for regulating unauthorized absence under CP.C. No. 415 of 1999, dated 13.5.1999. As per the procedure, an employee who unauthorizedly absenting from work for more than 15 days, the concerned department has to send intimation to H.R. Department. Thereafter, H.R. Section will send a letter to the last known address as well as permanent address advising the employee to join duty immediately. If he does not report for duty even after receipt of that letter, another letter will be written to him within 60 days of start of unauthorized absence. Further, if the employee remains absent for 90 days and even he does not respond to the notices, he shall loose his lien on the post and he is deemed to abandon the services of NTPC. The procedure also contemplated that if an employee turns up after the expiry of 90 days, he shall not be allowed to join duty. However, he may be permitted to explain his case before a Committee constituted for the purpose. The recommendations of the Committee after examining the employee, will be taken into consideration and a decision will be taken and communicated to the party. In the present case also, the request of the Petitioner was placed before the Committee and he was communicated with proceedings dated 4.10.2010. The Petitioner has not responded to the notices and not reported for duty, inspite of receipt of the notice therefore he is governed by the clause 24.9 of NTPC service rules. The Petitioner failed to avail the opportunities made available to him. Thus, the Respondent has given fair and reasonable opportunities to the Petitioner before invoking the provisions of Clause 24.9 of NTPC Service Rules. He has been made known of Clause 24.9 of the Service Regulations and he was also given opportunity to rejoin the duty to avoid penal consequences thereof. Clause 24.9 of Service Rules and the procedure for regulating unauthorized absence under C.P.C. No. 415 of 1999 was followed in case of Petitioner without any deviation. The service record of the Petitioner shows that he was not maintaining good and clean record. On earlier occasion also, his name was found in a suicide note of late D. Jagadishwar, Emp. No. 32404 of (F&A) Department. The action is taken in accordance with Clause 24.9 of Service Rules and his request was also considered by a Committee constituted for the purpose. Thus, the Petitioner is not entitled to any relief much less the relief of reinstatement into service as prayed in the present petition. It is submitted that the name of the Petitioner was struck off from the rolls of the Corporation, in terms of Clause 24.9 of the NTPC Service Rules. The Petitioner was

afforded a reasonable opportunity in accordance with principles of natural justice. It is, therefore, prayed to reject the Claim Petition.

4. Petitioner has filed the following documents, viz., Photostat copy of charge sheet, notices dated 30.11.2009, 22.1.2010, 1.2.2010, 6.2.2010 and 18.2.2010 from Respondent Management advising the Petitioner to report for duties immediately, workman's representation dated 22.2.2009 requesting the Respondent to hold the order of termination, and letter dated 4.10.2010 by the Respondent Management to the workman regarding his request to permit him to re-join duties and extract of 24.9 Service Rules.

5. Respondent has also filed Photostat copies of 11 documents viz., extract of relevant clause No.24.9 of N.T.P.C. Service Rules, appointment order No.220/2002 dated 22.7.2002 of Sri G. Bhaskar as Junior Assistant Trainee, letter dated 22.2.2009 from Sri G. Bhaskar to Respondent Management, notices dated 30.11.2009, 22.1.2010, 1.2.2010, 6.2.2010 and 18.2.2010 from Respondent Management advising the Petitioner to report for duties, office order No.24/2010 by the Respondent to Sri G. Bhaskar, letter dated 28.4.2010 from Sri G. Bhaskar to the AGM(HR), NTPC, Record Notes of the discussions on the representation of Sri G. Bhaskar held on 1.7.2010 and letter dated 4.10.2010 addressed to Sri G. Bhaskar from Respondent Management.

6. **On the basis of pleadings and submissions of the parties, following points emerged for determination in the present matter**:-

I. Whether the petitioner remained unauthorizedly absent from duty from appointed place of work without permission and sufficient cause in contravention of NTPC Service Rules no. 24.9 and Companies' Standing Orders, and did not report on duty in response to the four letters dated 30.11.2009, 22.01.2010, 01.02.2010 and 06.02.2010 respectively sent by Respondent to Petitioner?

II. Whether the petitioner has shown justifiable accounts for his unauthorized absence from duty?

III. Whether the action of the Respondent management in terminating the service of the petitioner vide order dated 18.02.2010 is justified?

IV. To what relief petitioner is entitled for?

Findings

7. Points No. I & II:- Since, both the points are interrelated, therefore, being dealt together. Petitioner submitted that he joined the service in Respondent Corporation on 22.07.1992 and he maintained good record of service till he was terminated from the service by the Respondent. That on 15.11.2009, he was falsely implicated in a criminal case which was only stage-managed and foisted on him with ill motives for defaming him in corporation. Further, he submits that due to apprehension of his arrest in criminal case, he virtually kept himself away from duty and the office. Therefore, he was unable to follow the rules and regulation of the corporation for availing the leave with intimation. He further submitted that in view of the situation beyond his capacity he had to remain on leave and the attitude of Management to terminate his service is disproportionate to his conduct of absenteeism. Further, he admitted that the Corporation had issued four letters dated 30.11.2009, 22.01.2010, 01.02.2010 and 06.02.2010 respectively, and thereafter, vide letter dated 18.02.2010, terminated his services w.e.f. 14.02.2010. Petitioner submits that there was no intention on his part to cause inconvenience to the incorporation and he did not deliberately avoided to give replies to letters sent by corporation.

8. On the other hand, Respondent Counsel submits that the petitioner is governed by the provisions of NTPC Service Rules and he remained unauthorizedly absent from duty within 90 consecutive days in contravention of the provisions of NTPC Service Rule No. 24.9 and therefore, he automatically lost lien on his post and deemed to have voluntarily abandoned and left the service of Corporation without notice. Respondent further submitted that the petitioner failed to substantiate an account for his unauthorized absence from duty within 90 consecutive days to the entire satisfaction of the Management. Therefore, he was rightly terminated from the services of the corporation.

9. Before discussion of contention of both the parties it would be apposite to have a glance on the provision of Rule 24.9 of NTPC Service rules:-

The Rule no. 24.9 of NTPC Service Rules reads as follows:-

"*An employee who remains unauthorizedly absent from duty or place of work either without sanction of any leave or after expiry of sanctioned leave, if any, and does not report for duty for any reason whatsoever within 90 consecutive days from the date of his/her unauthorized absence, shall automatically lose lien on his / her post and he/she shall be deemed to have voluntarily abandoned and left the service of the Corporation without notice.*"

Petitioner has admitted that he was absent from duty since 15.10.2009 for 90 consecutive days in breach of the NTPC Service Rules no. 24.9. Petitioner also admitted that Respondent Corporation had issued four letters dated 30.11.2009, 22.01.2010, 01.02.2010 and 06.02.2010 respectively for calling up on him to join duty. Thereafter Respondent issued letter dated 18.02.2010 by which terminated services of Petitioner w.e.f. 14.02.2010. It is also admitted by the petitioner that in response to the aforesaid letters neither he joined the duty nor intimated the

Respondent about the reasons for his absence from duty or place of work. Admittedly, petitioner was terminated from service for the contravention of NTPC Service Rules no. 24.9. As per rule, Petitioner by his own conduct of unauthorized absence for 90 consecutive days from duty automatically lost lien on his post and he was deemed to have voluntarily abandoned and left the services of Corporation without notice. Moreover, he did not reply to the aforesaid letters issued by the Respondent Corporation to the petitioner calling for joining the duty. Therefore, at this stage, he cannot be permitted to plead that he was not provided fair hearing opportunity by the Corporation before passing the impugned termination order. Because, before passing the termination order of the petitioner, Respondent Corporation accorded fair hearing opportunity to the Petitioner and asked him to join the duty by issuing four consecutive letters addressed to the petitioner by following the principles of natural justice. It is not the case of the Petitioner that he did not receive aforesaid letters sent by the Respondent. Therefore, the plea of the Petitioner regarding not providing the hearing opportunity before terminating his service is not tenable.

10. Now, next question arises whether Petitioner has substantiated an account for his unauthorized absence from duty within 90 consecutive days or he has shown sufficient reason to justify his absence from duty to the entire satisfaction of the Management.

The proviso to the NTPC Service Rules No. 24.9 provides: -

"*Provided, however, if the employee subsequently substantiates and accounts for his/her unauthorized absence from duty within 90 consecutive days from the date of the termination order to the entire satisfaction of the management, the management may regularise his/her period of unauthorized absence on such terms and conditions as it may deem fit and proper*"

In this context, the petitioner would submit that he had replied to the letter dated 18.02.2010 but he could not reply other letters due to fear of his arrest in fabricated case. Further he states that as on the date of appearance before the Corporation Committee on 01.07.2010, he vividly explained to the Officials and to the Committee about his unauthorized absence from duty but Committee failed to analyze the entire Gamut of the problem of petitioner. It is also submitted that the petitioner pleaded before the Committee that unforeseen trap and abnormal situation prevented him not to follow the rules and regulation and compelled to remain on leave without intimation. But the Respondent Corporation Committee did not accept his aforesaid reasons.

11. On the other hand, Respondent submitted that petitioner vide letter dated 22.02.2009, informed the Respondent corporation that he was involved in a false case registered in NTPC Police Station and he is trying for anticipatory bail before Hon'ble High Court to withhold his termination. But the information was received by the Respondent Corporation that Petitioner was detained in criminal case at District Jail, Karimnagar. Thereafter, the copy of letter dated 18.02.2010 was forwarded to Superintendent of Jail Karimnagar with request to furnish the same. The petitioner on receipt of the letter dated 27.03.2010 addressed a letter dated 28.04.2010 to Respondent requesting to revoke his termination and to permit him to join duty. Respondent states that in terms of clause 27 (3) of standing procedures a Committee was constituted for examining the case of petitioner and the committee on its meeting on 01.07.2010 heard the contention of petitioner and considered the relevant records. Thereafter, the Committee submitted a report on 27.08.2010 with the finding that the petitioner failed to establish the genuine reasons for his unauthorized absence from duty and it also found that petitioner intentionally did not explain the reason within stipulated time. Therefore, Committee did not recommend for revocation of termination order and declined his request for joining the duty. Therefore the competent authority of Corporation vide proceedings dated 04.10.2010 communicated to the petitioner that he failed to establish the genuine reason for his absence and his request to join the duty was declined.

12. From the plea taken by the petitioner it is quite clear that the petitioner sent the intimation to the Respondent about his implication as well as detention in criminal cases only after having received his termination order after expiry of ninety days. He did not reply to the four letters sent earlier by the Respondent Corporation to the Petitioner for calling upon him to join the duty. It also delineates from record that petitioner was afforded sufficient opportunity of hearing for showing the reason for his unauthorized absence for 90 consecutive days from the duty through four letters issued by the Respondent before issuing his termination letter dated 18.02.2010 but Petitioner deliberately and intently he did not avail that opportunity without any just reasons. Now he cannot be permitted to blame Respondent for not providing fair opportunity of hearing before his termination. Further he deliberately avoided to reply the letters of Respondent to conceal the information of his implication in criminal cases and only after receipt of termination order through letter dated 18.02.2010, he explained reason for absence from duty vide letter dated 28.04.2010 with prayer to permit him to join Service. But, the reasons shown by the petitioner was not found sufficient and justifiable by the Committee. The petitioner has admitted that on 15.11.2009, he was implicated in criminal case and thereafter he absconded from the duty without any intimation and information to Employer. The conduct of the petitioner being absent from duty as well as absconding from the course of law cannot be justified in any manner. Moreover, the petitioner himself pleads that due to apprehension of the arrest in the criminal case, he did not join the duty. But it does not appeal to common sense of any man of ordinary prudence because if he himself was unable to come to work place to join duty due to the fear of his arrest by the Police in criminal case, then, he would have informed or intimated the Respondent Corporation about the reason for his not attending the duty either by

registered post letter or by any other means i.e., through relatives or friends. Even, in response to four letters earlier addressed to him, he neither himself sent information through postal letter nor he tried to sent it through his relatives or friends. It is unfathomable that what prevented Petitioner to adopt any one the above course to intimate his employer about reason of his absence. Thus, the reason shown by the petitioner for his unauthorized absence from duty in such circumstances cannot be said to be justified or excusable. Thus, Petitioner failed to substantiate and account for his unauthorized absence from duty within 90 days from the date of his termination order to the entire satisfaction of Management.

13. It would be pertinent to make reference of the decisions of the Apex Court in the case of **Viveka Nand Sethi vs. Chairman J&K Bank LTD and others (2005) 5 SCC Page 337, therein, Apex Court have held** :-

" 14. What fell for consideration before the Industrial Tribunal was the interpretation and/or applicability of the said settlement. The Industrial Tribunal committed an error of record insofar as it proceeded on the basis that the settlement had not been proved. The settlement being an admitted document should have been considered in its proper perspective by the Industrial Tribunal. Clause (2) of the said settlement is a complete code by itself. It lays down a complete machinery as to how and in what manner the employer can arrive at a satisfaction that the workman has no intention to join his duties. A bare perusal of the said settlement clearly shows that it is for the employee concerned to submit a proper application for leave. It is not in dispute that after the period of leave came to an end in June 1983, the workman did not report back for duties. He also did not submit any application for grant of further leave on medical ground or otherwise. It is in that situation the memorandum dated 2.11.1983 was issued and he was asked to joint his duties. It is furthermore not in dispute that despite receipt of the said memorandum, the workman did not join duties pursuant whereto he was served with a notice to show cause dated 31.12.1982. He was required to resume his duties by 15.1.1984. The Bank received a telegram on 17.1.1984 and only about a month thereafter he filed an application for grant of leave on medical ground. It is not the case of the workman that any leave on medical ground or otherwise was due to him. Opportunities after opportunities indisputably had been granted to the workman to explain his position but he chose not to do so except filing applications for grant of medical leave and that too without annexing proper medical certificates.

19. We cannot accept the submission of Mr. Mathur that only because on a later date an application for grant of medical leave was filed, the same ipso facto would put an embargo on the exercise of the jurisdiction of the Bank from invoking clause 2 of the bipartite settlement.

20. It may be true that in a case of this nature, the principles of natural justice were required to be complied with the same would not mean that a full-fledged departmental proceeding was required to be initiated. A limited enquiry as to whether the employee concerned had sufficient explanation for not reporting to duties after the period of leave had expired or failure on his part on being asked so to do, in our considered view, amounts to sufficient compliance of the requirements of the principles of natural justice."

Similarly, in the present matter also, the Petitioner remained unauthorizedly absent from duty for consecutive 90 days in contravention of the rules 24.9 of NTPC Service Rules as well as Companies' Standing Orders. He did not intimate or inform to the Respondent during said period. Moreover, he did not try to move any leave application to the Respondent within afore said period. Further, he failed to substantiate and account for his unauthorized absence from duty to the entire satisfaction of Management when he was provided fair opportunity of hearing by the committee. Therefore, in view of the foregone discussion and NTPC Service Rules, and law laid down by the Apex Court in the case of **Viveka Nand Sethi vs. Chairman J&K Bank LTD and others,** the inevitable conclusion comes out that the petitioner was unauthorizedly absent from his duty in contravention of Rule 24.9.

14. Further, in this context the reference of decision of Hon'ble Apex Court in the case of **New India Assurance Co. Ltd., Vs. Vipin Behari Lal Srivastava, Civil Appeal No.5213 of 2006 dated 21.2.2008 is also relevant. The** facts of case are that a workman was found absent from his appointed place of work without permission of employer or sufficient cause. Hon'ble Apex Court placing reliance on the law laid down in **Viveka Nand Sethi vs. Chairman J&K Bank LTD and others (2005) 5 SCC Page 337, have held:-**

"12. In view of the factual position, when tested on the touchstone of the principles of law and governing rules, the inevitable conclusion is that the impugned order of the High Court passed by the learned Single Judge dismissing the writ petition, i.e., C.W.P. No.1720/1998, by order dated 20.1.2006 cannot be sustained and is set aside. The order passed by, the departmental authorities directing removal of the Respondent from service is maintained."

Similarly, in the present case, Petitioner was absent from appointed place of work without permission or sufficient cause and he was removed from service in view of provision of Rule 24.9. Therefore, in view of law laid down by Hon'ble Apex Court in the case of **Viveka Nand Sethi vs. Chairman J&K Bank LTD and others (2005) 5 SCC Page 337,** Petitioner was rightly terminated from service in contravention of provision of Rule 24.9 of NTPC Rules. Further, he was provided opportunity of hearing in view of the proviso to Rule 24.9 but he failed to substantiate and account for reasons for his unauthorized absence from duty to the entire satisfaction of the Management. Thus, the conduct of the petitioner was found in contravention of the provision of rules 24.9 of NTPC Service Rules as well as the Companies Standing Orders.

Thus, Points No. I & II are answered accordingly.

15. **Points No. III & IV**:- In view of the fore gone discussion and finding given in determination of points No. I & II, it is inevitable conclusion that the petitioner was the employee of the Respondent Corporation and he remained absent from duty for 90 consecutive days in contravention of the rules 24.9 of NTPC Service Rules and he failed to account sufficient reasons for his unauthorized absence from duty before the committee. Although, he was also afforded fair opportunity of hearing to account for his absence but he failed to put forward any justifiable reason for his unauthorized absence from duty. Further, petitioner admitted that he was implicated in the criminal case and later on was arrested and detained in jail and due to the reason he was absent from duty. But, as per Service Rules, he never intimated or attempted to intimate his employer about his implication as well as arrest and detention in criminal case. Thereby, he deliberately concealed information from the employer, which itself amounts to misconduct on the part of petitioner. Further, Respondent would submit that on the earlier occasion also, petitioner's name was found in a suicide note of Late Shri D.Jagadishwar, Employee No.. 32404 of (F & A) department.

16. Therefore, in view of the discussion in fore gone paragraphs as well as NTPC Service Rule and company's Standing Orders, and considering gravity and severity of the misconduct committed by the petitioner, the action of the Respondent Corporation in terminating the services of the petitioner is held legal and justified and Petitioner is not entitled to the relief of reinstatement or any other relief prayed for. Therefore, Petitioner's claim-petition is found devoid of merit and hence, liable to be dismissed.

Thus, Points No. III & IV are answered accordingly.

AWARD

The action of the Respondent Corporation in terminating the services of Petitioner Sri G. Bhaskar vide letter dated 18.02.2010 w.e.f 14.02.2010 is held legal and justified. Petition stands dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 21st day of June, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 4 जुलाई, 2023

का.आ. 1165.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (02/2022) प्रकाशित करती है।

[सं. एल-12011/12/2022-आईआर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 4th July, 2023

S.O. 1165.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 02/2022) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow as shown in the Annexure, in the industrial dispute between the management of Central Bank of Inidia and their workmen.

[No. L-12011/12/2022- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM-LABOUR COURT, LUCKNOW

Present: Justice ANIL KUMAR Presiding Officer

I.D. No. 02/2022

Ref. No. L-12011/12/2022 – IR(B-II) dated 13.01.2022

BETWEEN

The General Secretary, Central Bank Employees Congress,
MIG, C-1241, Rajajipuram, Lucknow - 226017

AND

1. The Regional Manager, Central Bank of India, Regional Office,
   117/H-1/240, Pandu Nagar Kanpur(U.P.) - 208005
2. The Field General Manager/Zonal Manager,
   Central Bank of India, Zonal Office, 23,
   Vidhan Sabha Marg, Hazratganj, Lucknow -226001

AWARD

By order No. L-12011/12/2022 – IR(B-II) dated 13.01.2022 the present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

> **"Whether the action of the management of Central Bank of India regarding transfer of Shri Ravinder Singh, Clerk from Shuklaganj Branch, Unnao to Mathar Branch, Unnao vide order dated 31.03.2021 is legal and justified? If not, to what relief the workman is entitled to and from which date?"**

Accordingly, an industrial dispute No. 02/2022 has been registered on 28.01.2022.

From the perusal of record, the position which emerge out is that till date the claimant/workman has not filed any statement of claim.

Moreover, as a matter of fact and record, neither workman nor its authorized representative has turned up before this Tribunal nor has filed any statement of claim.

Findings & Conclusion:

Taking into consideration the fact that till date no statement of claim has been filed by the claimant in order to establish his claim as per the reference dated 13.01.2022.

So in view of the said facts, as well as the law laid by the Hon'ble High Court in the case of ***V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194*** as under:

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."*

In the case of ***M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164*** Hon'ble Allahabad High Court has held as under:

> *"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

And by the Hon'ble Allahabad High Court in the case of ***District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519;*** wherein it has been held as under:

> *"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."*

As the workman has not filed any statement of claim/oral/documentary evidence, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 4 जुलाई, 2023

का.आ. 1166.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल एविएशन कंपनी ऑफ इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 25/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.07.2023 को प्राप्त हुआ था।

[सं. एल-11012/34/2008-आई आर (सी.एम-I)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 4th July, 2023

S.O. 1166.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the Management National Aviation Company of India Limited and their workmen, received by the Central Government on 04/07/2023

[No. L-11012/34/2008 – IR (CM-I)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. BHUTIA, Presiding Officer

REF. No. 25 OF 2008

Parties: Employers in relation to the management of

National Aviation Company of India Limited

AND

Their Workmen

Appearance :

On behalf of Management	: Present
On behalf of the Workmen	: None

Dated 20th March, 2023

AWARD

The Management of National Aviation Company of India Limited is present through its Ld. Counsel Mr. Sushil Karmakar.

None appears on behalf of the Union upon the matter is called.

Accordingly, the case is taken up for hearing argument. Heard Ld. Counsel for the Management.

The Govt. of India in exercise of the power conferred by Clause (d) of Sub-Section (1) and Sub (2A) of Section 10 of the Industrial Disputes Act,1947 Act referred the following dispute for adjudication by this Tribunal vide Ministry of Labour Order No. L-11012/34/2008-IR(CM-I) dated 20.10.2008.

"Whether the action of the Management of National Aviation Company of India Ltd. (NACIL) (erstwhile Air India) is not restoring the seniority and pay protection of Mrs. Songita Srivastava Chopra, Customer Services Supervisor, is justified and legal?"

To what relief is the concerned workmen entitled?

Parties had put their appearance. Documents filed by the parties were marked on consent on 16.01.2014 and on 05.03.2014 before the workmen tendered her evidence and chief on affidavit on 05.03.2014 and whose evidence was completed on 11.11.2014.

The case was dragged for adducing further evidence by the workmen till 30.03.2015. Ultimately, the workmen chased evidence from her side without adducing further evidence.

Thereafter since 18.05.2015 till 11.01.2023, the case was posted for evidence from the side of Management.

Management, after lapse of eight years, examined one Ravi Sanjay Kumar Beek on 11.01.2023 and who was discharged without cross-examination as no one bothered to appear from the side of Union or the workmen. Record shows that the Union has stopped appearance since the year 2018 and even afte due service of notice upon it.

Be that as it may the facts giving rise to the present reference case in gist is that the Management of NACIL (AIR INDIA) has adopted different approach in different individual in case of voluntarily transfer to one place to another.

It is the case of Union, the concerned workman who had sought voluntary transfer from Kolkata to Delhi, she had to lose her seniority and cut in basic pay. Again, during her voluntary transfer from Delhi to Kolkata, she lost her seniority.

But in case of Ms. P. Mitra who took voluntary transfer from Kolkata to Chennai and again from Chennai to Kolkata, she did not lose either her seniority or reduction in pay.

The Management gave full pay protection and seniority on notional basis at the time of promotion to Mr. B.R. Das who had sought voluntary transfer from Delhi to Kolkata.

It has also been contended that Management allows voluntary transfer only against vacancy of the particular grade in the particular department of that station.

The transfer policy of the Management nowhere provides the staff seeking voluntary transfer will be downgraded from his/ her previous grade or basic pay will be re-fixed to the lowest one.

Thus, the Union has alleged the discriminatory approach taken by the Management against concerned workman Smt. S.S. Chopra is bad in law and illegal and has prayed for restoration of seniority and pay protection.

The Management in its written statement has contended that Mrs. Sangita Srivastava Chopra joined Air India as a Traffic Assistant (Grade-4) on 12.03.1992. That she was promoted to the post of Senior Customer Services Supervisor (Grade-05) on 01.07.1997.

The Seniority / Gradation List for Grade-04 Post and Grade 09 Post is region-wise or department-wise. Whenever a staff of Grade-04 or Grade-09 seek voluntary transfer from one Region to another Region, then such staff will lose his/ her existing seniority and he/she will be become the junior most to the existing list of the same grade of the region / department when the staff is transferred, but in case of voluntary transfer of a staff of Grade-09, he/ she will be demoted to the Grade-04 and pay will be fixed in the scale of Grade-04.

Since Mrs. Chopra was duly informed about the consequence, she has to face on voluntary transfer from North India Region Delhi to East India Region, Kolkata. Accepting the consequence she sought voluntary transfer from Delhi to Kolkata and was transferred w.e.f. 02.05.2000 and once again on 12.04.2004.

It has been contended that Mr. B.R. Das was transferred from Grade-4 to Grade- 4 from Delhi to Kolkata. Mrs. P. Mitra was wrongly shows a Senior C.S.S Grade in the Eastern India Region due to wrong recording and which was later rectified.

Thus, it has prayed for dismissal of the claim made by the Union.

After going through the oral evidence of the concerned workmen and the evidence of Management witness Ravi Sonjay Kumar Beek that it appears Smt. Sangita Srivastava Chopra was appointed as Senior Traffic Assistant – cum- First Stewardess under Vayudoot in March, 1990. When such airlines was closed, she was absorbed by AIR

INDIA in the Year 1992 as a Traffic Assistant. She had sought for voluntary transfer for her relocation in Delhi after marriage in the Year 2000.

Ext. No.-4 dated 25.04.2000 proves that such application was allowed by the Management on condition that on voluntary transfer she will not be entitled to claim transfer benefits and allowances except one economy class free passage from Calcutta to Delhi that she would lose here seniority at Eastern India Region and her seniority amongst the Customer Service Supervisor and salary will be re-fixed on the date of her reporting at I.G.I Airport.

Accordingly, she will be the junior most Customer Services Supervisor in the Northern India Region including to those who are on probation on the date of her transfer to I.G.I Airport, New Delhi.

Ext. No. M-1 further contains a clause if such conditions are acceptable to the concerned employee, then she has to give her consent in writing and join her new place of posting.

Ext. No. M-6 shows the total salary of the concerned workman in the month of July 2000 was Rs.10, 730/- and in the month of August, 2000, the total emolument was Rs.11, 335.99 Paisa.

It is very interesting to note here that the Union or the workman has failed to produce what was her total emoluments when she was posted at Calcutta as a Senior Customer Services Supervisor in the month of March-April, 2000 to allow this Tribunal to ascertain indeed on transfer. She not only lost her seniority, but also suffered financially due to pay cut.

Ext. M. 5 shows that she was transferred to Delhi in the same grade/ post in which she was working in Calcutta, except her position was placed in the bottom of the existing gradation list of Senior Customer Services Supervisor including probation who were already working in the Northern India Region Delhi before her joining there.

Ext. No. M. 5 nowhere reflects the workman was demoted to the post of Traffic Assistant (Grade-04) as alleged. In fact, she was transferred in the same post in which she was working in Calcutta.

Ext. No. M-7 dated 15.06.2000 shows that the workman concerned had accepted all terms and condition as stipulated in Ext. No. M-5.

Ext. M-8 shows that the concerned workman had joined Delhi on the terms & conditions as mentioned in Ext. 5 as she had once again made a prayer before the Management of AIR INDIA for her deployment from Delhi to Calcutta on the ground of illness of her parents on 13.03.2004. She has signed on such letter as a Customer Services Supervisor and not a Traffic Assistant (Grade-4).

This time too she was granted voluntary transfer vide Ext. M-9 subject to the same terms and condition stipulated in Ext. M-5. Further, Ext. M-9 shows that she agreed to forgo her seniority.

She has failed to produce her pay statement to show that on each voluntary transfer, her pay scale was reduced to the pay scale of Traffic Assistant (Grade-4).

Now, It has become a settled norm in service jurisprudence that the seniority in the free of request transfer/ voluntary transfer the person seeking transfer will be placed below the junior most in the category in the new region/ unit / department. Such person shall now be allowed to count his/ per previous service towards seniority. Such transfer should not be prejudiced to the legitimate interest of anyone in the department/ unit/ region to which he / she is transferred. But such person may be allowed to count his/ her previous service towards increment, leave, pension, gratuity etc. Such person will not be required to undergo fresh probation.

If such person is transferred from one department to another or from one unit to another or from one zone to another zone or region by the Management due to administrative reason, then such person will retain all his / her right in the old unit/ department or zone as the case may be.

Therefore, this Tribunal does not find any difficulty in the transfer case of the concerned workmen for placing her in the bottom of the Gradation List of the same category in the North India Zone Delhi and later on redeployment to Kolkata as she had given up her seniority by executing Ext. M-7 and Ext. M-10. Ext. M-12 proves the allegation of favourition to Mrs. Piyali Mitra appear to be baseless.

Considering the documentary evidence that have been produced by the Management it is seen that dispute raised by the Union is a frivolous arrived without any basis. Therefore, this Tribunal finds no merit in the dispute under referenced.

Accordingly, Reference 25/08 is dismissed and an Award of dismissal is passed.

Send copy of Award to the Ministry for doing the needful.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 4 जुलाई, 2023

का.आ. 1167.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्पाइस जेट एयरलाइंस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 08/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.07.2023 को प्राप्त हुआ था।

[सं. एल-11012/03/2015-आई आर (सी.एम-I)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 4th July, 2023

S.O. 1167.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 08/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the Management Spice Jet Airlines Ltd. and their workmen, received by the Central Government on 04/07/2023

[No. L-11012/03/2015 – IR (CM-I)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. BHUTIA, Presiding Officer

REF. No. 08 OF 2015

Parties: Employers in relation to the management of

M/s. Spice Jet Airlines Ltd.

AND

Their Workmen

Appearance :

On behalf of Management	:	None
On behalf of the Workmen	:	None

Dated 14th March, 2023

AWARD

The Principal employer Spice Jet, the contractor employer M/s. J.P. Aviation Pvt. Ltd. and the employee Shri Nandalal Yadav are found absent today too inspite of due service of notice of appearance sent to them by speed post on 12.01.2023 and as per track report.

In fact record shows all the parties had put their appearance. The workman had filed his claim statement and date was fixed for filing W.S. by the employer and thereafter parties have failed to appear and pursue with this reference. Case referred by Ministry of Labour vide file No. L-11012/03/2015-IR(CM-I) dated 26.02.2015 for determination

> **"Whether the action of M/s. J.P. Aviation Ltd. working as contractor in the premises of M/s. Spice Jet Airlines, Kolkata in terminating the service of Shri Nandalal Yadav without assigning any reason and also allegedly not paying the legal dues are justified? To what relief the workman Shri Nandalal Yadav is entitled to?".**

The workman in his claim statement has contended that M/s. J.P. Aviation Ltd. engaged him to work as a loader in the month of May 2008. He discharged his duty diligently & sincerely, but suddenly he was terminated from the service in withour adhering to Sec. 25F he has terminated.

Thus, he has prayed for reinstatement with back wages.

Unfortunately, apart from mere claim statement this is nothing in the record to substantiate the claim of the workman during that period from May, 2008 and Dec., 2008 i.e. during the period of employment of 245 days he worked for 240 days.

In fact, he has stated that his service was terminated on and from 01.12.2008 . In that case it appears he had rendered less than 240 days of service to M/s. J.P. Aviation Ltd., his immediate employed.

Therefore, the workman being a temporary / casual worker engaged as loader for a period of less than 240 days during the period of May, 2008 to Nov., 2008 i.e. 7 months is not entitled to claim retrenchment benefit as provided U/s. 25F of the I.D. Act and not entitled to reinstatement with back wages.

Accordingly, Ref. No. 08/2015 is dismissed being not maintainable and award to that effect is passed.

Send copy of this Award of dismissal to the Ministry for doing needful.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 4 जुलाई, 2023

का.आ. 1168.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ सं. 17/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.07.2023 को प्राप्त हुआ था।

[सं. एल-22011/54/2012-आई आर (सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 4th July, 2023

S.O. 1168.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the Management Food Corporation of India and their workmen, received by the Central Government on 04/07/2023

[No. L-22011/54/2012 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. BHUTIA, Presiding Officer

REF. No. 17 OF 2013

Parties: Employers in relation to the management of

Food Corporation of India, Regional Office

AND

Their Workmen

Appearance :

On behalf of Management : Present
On behalf of the Workmen : None

Dated 6th March, 2023

AWARD

Management is present, but none appears from the side of Union, when the matter is called for hearing.

As per track report notice, sent by Speed Post upon the Union on 12.01.2023, has been duly served.

Therefore, the Union which has espoused the present dispute before the authority concerned challenging the assignment of job of loading and unloading to Contract Labours in place of D.P.S workers working for last 13 years in F.C.I Godowns, since not interested to proceed with the case.

The Govt. has referred such dispute for adjudication by this tribunal vide its Reference Order No. L-22011/54/2012-IR (CM-II) dated 05.03.2013.

The record shows the Union which has espoused the dispute did not bother to appear inspite of due of service of notice upon it. So it can be assumed that it is no more interest to proceed with the dispute.

In view of the above, the Reference Case No. 17/13 is dismissed for want of prosecution.

Award is passed accordingly.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 4 जुलाई, 2023

का.आ. 1169.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 40/2022) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.07.2023 को प्राप्त हुआ था।

[सं. एल-22011/22/2022-आई आर (सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 4th July, 2023

S.O. 1169.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2022) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the Management Food Corporation of India and their workmen, received by the Central Government on 04/07/2023

[No. L-22011/22/2022 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. BHUTIA, Presiding Officer.

REF. No. 40 OF 2022

Parties: Employers in relation to the management of

Food Corporation of India

AND

Their Workmen

Appearance :

On behalf of Management, **Food Corporation of India** : Sanjukta Basu Mallick, Ld. Advocate

On behalf of the Workmen/Union : Absent

Dated 06th June, 2023

AWARD

The Management of FCI is represented by its Ld. Counsel. The Union which has espoused the present dispute is found absent when the matter is called. It fails to file show cause as called for. None appears on its behalf.

In fact the record prove notice of the Reference has been duly served upon the concerned Union on 17.12.2022 as per A.D. Card, but it did not bother to put appearance and pursue with the dispute.

Therefore, it can be safely assume the Union either has no grievance against the management of FCI , or may be the dispute has been settled amicably.

However, the Govt. of India, Ministry of Labour vide order No. L-22011/22/2022-IR(CM-II) dated 16.11.2022 has referred the following issue to this Tribunal for adjudication.

> **"Whether the demand raised by the Joint Secretary, Food Corporation of India Workers' Union, Kolkata against the action of the Contractor M/s Bengal Protective Guard, Kolkata under the control of Food Corporation of India (FCI), Kolkata, West Bengal, over alleged attempt of removing the services of security personnel working for the last 12 to 15 years at JJP unit of FCI, is proper, legal and justified? If yes, to what relief the union concerned is entitled to and what directions are necessary in this respect?".**

Since the Union, which has raised the above dispute has not put appearance before this Tribunal to pursue with the dispute. So it can be assume the Union has no dispute with the Management on the above issue.

Accordingly, No Dispute Award is passed. Reference 40 of 2022 is disposed of.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 4 जुलाई, 2023

का.आ. 1170.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्पाइस जेट एयरलाइंस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 09/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.07.2023 को प्राप्त हुआ था।

[सं. एल-11012/04/2015-आई आर (सी. एम-I)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 4th July, 2023

S.O. 1170.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 09/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the Management Spice Jet Airlines Ltd. and their workmen, received by the Central Government on 04/07/2023

[No. L-11012/04/2015 – IR (CM-I)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. BHUTIA, Presiding Officer

REF. No. 09 OF 2015

Parties: Employers in relation to the management of

M/s Spice Jet Airlines Ltd

& M/s J.P. Aviation Services Pvt. Ltd.

AND

Their Workmen/Union

Appearance:

On behalf of Management: **M/s Spice Jet Airlines Ltd**

& M/s J.P. Aviation Services Pvt. Ltd. : Absent

On behalf of the Workmen : Shri Nani Gopal Pal : Absent

Dated 3rd April, 2023

AWARD

Today has been fixed for filing written statement by the Management of M/s Spice Jet Airlines and by the contractor Employer M/s J.P. Aviation Services Pvt. Ltd., but neither the Principal Employer nor the Contractor Employer are found present and ready to conduct the case.

Despite due service of notice of appearance to the workman Nani Gopal Paul, he fails to appear and proceed with the hearing of the case.

Central Govt. in exercise of powers conferred by Secion-10(1) (d) (2A) of the Industrial Dispute Act, 1947 through Order No. L-11012/04/2015 -IR (CM-I)) dated 26.02.2015, has referred the following issue:

"Whether the action of M/s J.P. Aviation Ltd. working as contractor in the premises of M/s Spice Jet Airlines, Kolkata in terminating the service of Shri Nani Gopal Paul without assigning any reason and also allegedly not paying the legal dues are justified? To what relief the concerned workman is entitled to?" for adjudication by this Tribunal.

Record shows that the workman had put his appearance and written statement of claim when he has contended that M/s Spice Jet Airlines Ltd. has engaged M/s J.P. Aviation Services Pvt. Ltd. for supply of man power of different categories to cater service to its own esteemed passengers travelling through its airlines.

Thus, the workman was engaged as a driver to drive the airlines vehicle at Netaji Subhas Chandra Bose Airport, Kolkata in the Year 2007. That he was paid sum of Rs.16,285/- (Rupees Sixteen Thousand Two Hundred Eighty Five) only per month and was covered under the ESI Act, 1948 and EPF & MP Act, 1972. That he discharged his duty with higher degree of diligence and sincerity.

That he suffered a chest pain While on duty on 09.02.14 and he was immediately taken to ESI Hospital, Manicktala. That after conducting necessary medical tests, he was referred to Fortis Hospital, Mukundapur, Kolkata and where he had undergo a bypass surgery on 24.02.2014. He was discharged from the hospital on 04.03.2014.

He was declared fit to resume his duty by Medical Officer of ESI on 21.06.14 that he went to join his duty on 22.06.2014, but was not allowed to join. He submitted representation before the immediate employer M/s J.P Aviation Pvt. Ltd. on 19.04.2014, but the employer did not pay any heed to his representation. That he raised a industrial dispute before the DLC Central Kolkata that on failure of conciliation proceeding that dispute is referred to this Tribunal for adjudication.

The Principal Employer M/s Spice Jet Airlines failed to appear despite service of notice served upon it.

The Contractor Employer M/s J.P Aviation Services Pvt. Ltd. had put appearance, but failed to file written statement.

Record shows that the contractor employer and the concerned workman have failed to pursue the present dispute since 09.06.2020. As both of them have stopped appearance to pursue the dispute.

The workman has failed to adduce any evidence or produce documents to show that he has been illegally retrenched from the service by his immediate employer M/s J.P Aviation Pvt. Ltd. without complying the statutory obligation as provided in the I.D. Act.

It is admitted fact that the concerned workman was employed as a driver to run the Airlines buses or vehicles within the premises of Netaji Subhas Chandra Bose Airport, Kolkata.

But his Medical Report, being in record show that he had undergone Bypass Surgery at Fortis Hospital, Mukundapur, Kolkata on 27.02.2014. His Medical Report further reveals that he has Social History of Smoking and Alcoholic. He had obtained fitness Certificate from the E.S.I Hospital and not from the Doctor under whose treatment and who had done his bypass surgery. Therefore, the fitness certificate, obtained by him from ESI Hospital cannot be taken into consideration as it is the doctor of the Fortis Hospital who operated him is the best person to say whether he is physically fit to discharge the duty of a driver of vehicle which are run within the premises of Subhas Chandra Bose International Airport, Kolkata.

Be that as it may, in the absence of oral evidenced of the workman to substantiate the claim made by him in his written statement, this Tribunal is of view that the claim statement cannot by itself prove the case /claim of the workman without the content of the same being proved by the workman by adducing oral and authenticated documentary evidence.

Therefore, apart from claim statement of the workman, there is nothing in the record to decide the issue under reference. Accordingly, the reference is dismissed being not proved by substantive evidence. Accordingly, Reference Case No. 9/2015 is dismissed. Award of dismissal is passed.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 4 जुलाई, 2023

का.आ. 1171.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोल इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ सं. 03/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.07.2023 को प्राप्त हुआ था।

[सं. एल-22012/119/2003-आई आर (सी. एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 4th July, 2023

S.O. 1171.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03/2004*)* of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the Management Coal India Ltd. and their workmen, received by the Central Government on 0*4/07/2023*

[No. L-22012/119/2003 - IR(CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. BHUTIA, Presiding Officer

REF. No. 03 OF 2004

Parties: Employers in relation to the management of

Coal India Ltd.

AND

Their Workmen

Appearance:

On behalf of Management	: Present
On behalf of the Workmen	: None

Dated 17th January, 2004

AWARD

Shri Gourav Mittal, MW-02 is found present and he seeks time on the ground of absence of his Ld. Counsel.

The Union fails to appear. Notice sent to it has returned with postal endorsement "refused". Refusal is a good service and a presumption can be drawn the Union is no more interested to proceed with the case perhaps it has no more grievance against the Management.

Therefore, the Tribunal decided to dispose of the reference by invoking Rule 22 of the ID Rule, 1957. The Govt. of India, Ministry of Labour vide its Order No. L-22012/119/2003 (IRCM-II) dated 23.02.2004 has referred the following issue for adjudication.

> **"Whether the action of Management of Coal India Ltd., HQ Kolkata in not regularising Sri Girigovardhan Mukherjee and eight others (list enclosed) Canteen Workers who are deployed at CIL, HQ is legal and justified? If not, to what relief they are entitled to?"**

For proper adjudication of the above issue, the facts giving rise to the present dispute is that there is a canteen in the Head Quarter of CIA at Kolkata to provide food to its employees working their duty during office hours. Such canteen is run by a Committee consisting representatives from the Management as well as from the Union.

The Union which has espoused the present dispute on behalf of canteen employees has alleged the canteen is actually owned by the Management as Canteen Committee has to submit its accounts to the Management. The Committee is constituted for a period of five years only. Those nine workmen have been working for considerable period without any break. That Bharat Cooking Coal Ltd., a subsidiary of CIL has regularised and observed its canteen employee with all benefits and amenities to which its regular employees are entitled to. Therefore, it has prayed for regularisation of the service of their canteen workers as a permanent staff of CIL.

On the other hand, it has been alleged by the Management that for the convenience of its employees working at its HQ at Kolkata. A canteen has been established and the same is run and managed by a Canteen Committee formed by its employees. It has no responsibility to maintain the canteen. Those persons working in the canteen were employed by the Canteen Committee and not by it. These employees work under the supervision and control of the Canteen Committee.

Occasionally it grants subsidy on a lump sum basis to the Managing Committee of the canteen and not to the employee of the canteen. The canteen is not a departmental canteen. It is a holding company and it does not produce coal like its subsidiary companies which run the collieries. Collieries are under obligation to run canteen departmentally in view of the Mines Act 1952 and N.C.W.A. Therefore, canteen run by B.C.C.L cannot be equated with canteen run by CIL at its HQ at Kolkata.

Therefore, it has prayed for dismissal of Reference. The Union has examined following persons as its witness.

1. Akhay Kumar Mukherjee, the General Secretary of the Union as U.W-
2. Pradyut Chakraborty, one of the concerned Workman as U.W. No. 2 and
3. Jayanta Kumar Bhowmik, Ex. Employee of C.I.L. as U.W No. 3.

Twenty-five documents which has filed as per list have been exhibited as Ext. 1 to Ext. 25.

On the other hand, the Management has examined its Deputy Manager Puspa Deb and MW No. 1. It has also filed evidence in Chief on affidavit of one Gourav Mittal on 06.11.2019 and whom it has failed to examine till date i.e. even after lapse of more than 03 (three) years.

Documents mentioned in Sl. No. 1to 4 of its list have been marked as Ext. M-1 to M-4.

After considering the pleadings of the parties, evidence of their witnesses and the exhibited documents only question that requires determination for adjudication of the issue under reference is whether the canteen in question is a departmental canteen or statutory canteen or a normal canteen?

The Union all along contended that as per N.C.W.,A CIL and its subsidiaries are bound by terms and conditions contained in N.C.W.A. As per N.C.W.A canteen should be in each of the collieries / establishment.

The canteen in question being located with office premises of Coal India Ltd. Headquarter at Kolkata, it falls within the establishment.

That apart from furniture, utensils, crockeries, electrical water system, fuel, capital including subsidy are provided by B.C.C.L Management.

B.C.C.L one of its subsidiaries has absorbed canteen workers having completed 240 days of attendance as Canteen Mazdoor as per N.C.W.A. Running of canteen in a establishment is one of the activity connected with the business of the employer. Therefore, the Union has contended the nine canteen workers should be treated as Canteen Mazdoor and they are entitled to have same pay scale and service conditions as are applicable to regular Mazdoor of the Management. That their service record to be regularised by absorbing them.

While management contended the canteen in question is run by Managing Committee of Canteen Committee consisting of the representative of the Union. Employees of the canteen are recruited/ engage by Canteen Committee and they work under the control and supervision of the Canteen Committee. Management has no control over them. There is no relationship of employer and employee between the Management and Canteen workers. It has no power to take disciplinary action against these employee of canteen. Sanctioning of Leave, distribution of work, and maintenance of Attendance Register are all taken care by the Canteen Committee.

Now, it is settled law that under the Provision of factories Act, 1948 i.e. U/S 46 of Act, it is statutorily obligatory on the employer to provide and maintain the canteen for the use of its employee. Then such canteen becomes a part of the establishment and workers employed in such canteen are the employees of the Management.

If there is no statutory obligation, but otherwise an obligation on the employer to provide a canteen, then canteen become a part of the Management and employee working in canteen, the management is under obligation to provide only facilities to run a canteen in its establishment, then such canteen cannot be a part of the establishment.

Further if the obligation to provide canteen is cast upon the employer by an agreement then provision of canteen may be held to be a part of the service condition of the employee and which need to be decided taking into consideration of facts and circumstances of each case. If canteen service become a part of the service condition then canteen becomes a part of the establishment and the workers in such canteen become the employee of the management.

In the present reference the dispute relates to a canteen located in the Head Quarter of C.I.L at Kolkata i.e. a corporate Head Office.

C.I.L is the Apex body and which run and manages coal minies through its subsidiaries companies.

The term “factory” has been defined in Section 2(m) of the factory Act 1848 as follows:-

Factory means any premises including the precincts thereof –

(1) Whereon ten or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on.

(2) Wherein twenty or more workers are working or were working on any day of the preceding twelve months, and in any part of which a Manufacturing process is being carried on without aid of power or is

ordinarily so carried on, but does not include a mine subject to the operation of [the Mines Act, 1952 (35 of 1952) or a mobile unit belong to the armed forces of the Union, a railway running shed or hotels, or restaurant or eating place].

Explanation-I: For computing the number of workers for the purpose of this clause all the workers in [different groups and relays] in a day shall be taken into account.

Explanation –II: For the purpose of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be continued to make it a factory if no manufacturing process is being carried on in such premises or part thereof.

On plain reading of the definition of factory, it becomes clear Coal India Ltd. Corporate Head Office at Kolkata, cannot be said to be a factory as it is not engaged in manufacturing process at its head quarter. Consequently, the Sec. 46 of the factories Act, 1948 is not applicable to the Head Corporate Office of C.I.L at Kolkata.

However, Sec. 58 (P) of the Mines Act, 1952 provides in any mine where mere these 250 persons are ordinarily employed, a canteen or canteens for the use of such persons need to be maintained the employer.

No doubt, Coal India Ltd., the Apex Body is the owner of all coal mines and coal field located throughout the country, but it runs the same through its subsidiaries companies. Therefore, its corporate head office cannot be deemed to be a mine for the purpose of Sec. 58(P) of the Mine Act, 1952.

Nonetheless terms and condition contained in the National Coal Wages Agreement (NCWA) are equally applicable to both employees of Coal India Ltd. and its subsidiaries companies and the management. The management is bound to implement each and every condition mentioned or contained in N.C.W.A.

Ext. 4, filed by the Union, shows that such N.C.W.A contains a provision for a canteen in the collieries and its establishment.

Clause 8:9 of N.C.W.A shows that there will be a canteen in each collieries / establishment and the same will not run by contractor. Utensils and fuels required in the canteen will be supplied by the colliery management. The management will give certain amount to the Canteen Managing Committee depending upon the size and operation of the canteen to enable the canteen to supply food articles at cheaper price.

Further, recommendation of Sub-Committee 'B' JBCCI dated 19.07.1979 Annexure II shows New Jobs were created and Serial No. 3 of the same shows post of canteen Mazdoor was created to do miscellaneous jobs in a canteen.

There is recommendation for Revision of Pay Scale of canteen staff viz. (i) Canteen Supervisor or Manager (ii) Asstt. Supervisor/ Manager (iii) Canteen Cook and (iv) Canteen Boy.

Ext. W-8 letter dated 30.03.2021 of Secretary of the Canteen Committee of Coal India to the General Manager (Adm.) CIL (HQ), Calcutta shows the canteen committee had requested the management to supply Aqua Guard, Water Cooler and a Refrigerator for use in the canteen.

Ext. 9 dated 24.05.2002 shows that Management had sanctioned Rs.8500/- for purchase of Gas Cylinder for CAL (HQ) canteen.

Ext. 11 shows that canteen committee had requested the Dy. Chief Engineer (C), Coal India Ltd. to repair supply line of the canteen immediately on 22.10.2001.

Ext. 11/1 dated 30.05.2001 by Secretary, Canteen Committee to General Manager (Adm.) CIL, Calcutta shows a request for supply of new refrigerator as old supplied by Management was out of order.

Ext. 12 Minutes of the meeting of the canteen committee held on 14.06.96 and 18.06.96 and para 2 of such minutes shows that Management C.I.L had increased the monthly subsidy amount for revision of the wages of the nine canteen staff and request was placed before Sri A.K. Mondal, Finance Manager to implement the Revision of Wages from January, 1996.

Ext. 13 dated 1996 shows that since 14.06.1992 Management has been providing subsidy to meet the expenditure for payment of salary of nine canteen staff and who were provided with new sets of uniform as they were last provided in 1992.

It is admitted facts that Management providing financial assistance to the Canteen Committee in the form of subsidy and such admitted fact stands corroborated by Ext. W-14, Ext. W-15, Ext. W-16, Ext. W-17 and Ext. W-18.

From Ext. W-19 and Ext. W-20, it is seen the Wages are paid to the employees of the canteen from the subsidy fund provided by the Management as the canteen was run by the Canteen Committee as no profit and no loss basis and with an object to provide food to the employees of the Management during office hours in view of the terms

and conditions contained in N.C.W.A where facility of the canteen in each colliery or establishments of C.I.L. is stipulated as a part of welfare scheme.

From the document filed by the Union and discussed above particularly the N.C.W.A., it appears the Management Coal India Ltd. is under obligation to provide canteen facility to its employees working in each establishment i.e. H.C.L. in view of the N.C.W.A as part of the service conditions of its employees.

Ext. 4 further proves that post of canteen Mazdoor for doing miscellaneous jobs was created on 19.07.1979 and there was recommendation for revision of Pay Scale of canteen employees also.

It is also admitted fact the canteen in question is run by canteen committee consisting the representative of both the Management and Unions and not by any private contractor or co-operative society.

Therefore, the canteen being not run by outside agency, but by its own employees. Some as representative of the Management and some as representative of the Union.

So, it appears the canteen is run departmentally. Further fuel, furniture, utensils, aqua guards, cooler, refrigerator and other apparatus to run the canteen was/is provided by the Management.

Management also grant financial help to the canteen in the form of subsidy every month and from which payment was /is made to the canteen employees.

All these facts leave no room for doubt the canteen in question is a canteen run departmentally as part of service condition of the employees by the Management. Then such canteen becomes a part of the establishment and the workers in such canteen becomes the employee of the management.

The Union has espoused the present case on behalf of the following 09 (nine) Canteen Workers:

(1)	Sri Giri Govardhan Mukherjee working since	01.12.1981
(2)	Sri Basudeb Saddar	10.06.1982
(3)	Sri Bablu Samata	10.06.1982
(4)	Sri Khokan Sarkar	14.01.1985
(5)	Sri Banamali Panda	06.04.1987
(6)	Sri Lalu Pal	11.10.1989
(7)	Sri Pradyut Chakraborty	08.10.1992
(8)	Sri Girish Pal	02.11.1992
(9)	Sri Pranaya Mazumder	04.12.1992

The evidence of U.W. W1, U.W. W2 Sri Giri Govardhan Mukherjee and U.W W3 prima facie prove that the above person work in the departmental canteen of the C.I.L run by its own staff by forming a Canteen Committee. That they have been working there since the day they joined the Canteen.

It is admitted facts that the attendance of those canteen workers was controlled and supervised by the Managing Committee of the Canteen Committee and they were /are paid wages by the Canteen Committee and Leave was /is also granted by Canteen Committee.

But, they have worked for more than 240 days in a calendar year or for more than 270 days in aggregate for 36 months in the departmental canteen of the Management, having discharged perennial nature of duty the Management of C.I.L is bound to absorbed them or regularized them in the post of Canteen Mazdoor already created in 1979 i.e. on 19.07.1979 and when there is also recommendation for revision of pay of Canteen employees.

Therefore, from Ext. 4 it is seen in the canteens of collieries and establishment of the Coal India Ltd. and its subsidiaries companies there was/is sanctioned post for Canteen Mazdoor and for other grade employees. Inspite of having such sanctioned post in the canteen, the Management of C.I.L in its departmental canteen run at its HQ. at Calcutta engaged temporary workmen to work in its such canteen.

It has come on record the 09 (nine) workmen whose cases as espoused by the Union, have been working for more than 10 (ten) years without any break against sanctioned post of Canteen Mazdoor in the disputed canteen of the Management.

Further, Ext. W-5 to Ext. W-6/3 filed by the Union shows that B.C.C.L one of the subsidiary companies of C.I.L had absorbed its 04 (four) canteen employees on their having completed 240 days of attendance in the canteen in their respective jobs during the last one year. That they were working in the canteen of B.C.C.L Office at Calcutta. That they were absorbed as canteen Mazdoor in the Year 1990.

Such exhibited documents further prove that canteen run in the Office of the subsidiary company of the C.I.L was a statutory canteen. If that be so, the parent department or Apex Body cannot taken a different stand and say the canteen run by it neither a statutory canteen nor a departmental canteen.

Thus, the Coal India Ltd. is hereby directed to regularize the service of the above named 09 (nine) canteen employees working at its canteen situated at HQ., Kolkata from the date of reference i.e 23.02.2004 in the entry Pay Scale of Canteen Mazdoor and pay all the dues to which they are entitled to after deducting the Wages/ Salary paid to them from the subsidy provided by it to the Canteen Committee, within a period of six months from the date hereof failing which the Union or individual workman shall be at liberty to recover their due as per law.

Accordingly, the Reference is allowed in favour of the Union/ workmen and against the Management of C.I.L.

Award is passed accordingly.

Reference Case No. 03 of 2004 is hereby allowed, but without any cost.

Send a copy of the Award to the Ministry for doing needful.

Supply copy to the workmen / Union and Management for compliance.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 5 जुलाई, 2023

का.आ. 1172.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बडोदा के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (36/2021) प्रकाशित करती है।

[सं. एल-12011/08/2021-आई आर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 5th July, 2023

S.O. 1172.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 36/2021) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen.

[No. L-12011/08/2021- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

Present: Justice ANIL KUMAR, Presiding Officer

I.D. No. 36/2021

Ref. No. L-12011/08/2021 – IR(B-II) dated 30.03.2021

BETWEEN

Ms. Neha Awasthi, 490/35, Nazirganj, Daliganj, Lucknow

AND

1. The Zonal Manager, Bank of Baroda, Gomti Nagar, Lucknow
2. The Chief Executive Officer, Bank of Baroda Financial Solution Limited, 2nd Plaza, Vipul Khand, Gomti Nagar, Lucknow.
3. The Managing Director, M/s Quess Corporation Limited (formerly Ikya Human capital solutions), Ratan Square, 5th Floor, Near Barlingtan Chauraha, Lucknow .

AWARD

By order No. L-12011/08/2021 – IR(B-II) dated 30.03.2021 the present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

> **"Whether the claim of Ms. Neha Awasthi, Branch Relationship Executive, engaged in BOB Financial Solutions Limited through M/s Quess Corporation Limited (IKYA Human Capital Solution) payment of her wages w.e.f. 16.03.2020 to till date is justified in the eye of law or not? If yes, so to what relief the concerned workman is entitled to?"**

Accordingly, an industrial dispute No. 36/2021 has been registered on 08.04.2021.

From the perusal of record, the position which emerge out is that the till date the claimant/workman has not filed any statement of claim.

Moreover, as a matter of fact and record, neither workman nor its authorized representative has turned up before this Tribunal nor has filed any statement of claim.

Findings & Conclusion:

Taking into consideration the fact that till date no statement of claim has been filed by the claimant in order to establish his claim as per the reference dated 30.03.2021

So in view of the said facts, as well as the law laid by the Hon'ble High Court in the case of ***V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194*** as under:

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."*

In the case of ***M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164*** Hon'ble Allahabad High Court has held as under:

> *"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

And by the Hon'ble Allahabad High Court in the case of ***District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519****;* wherein it has been held as under:

> *"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."*

As the workman has not filed any statement of claim/oral/documentary evidence, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Award as above.

Justice ANIL KUMAR, Presiding Officer

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